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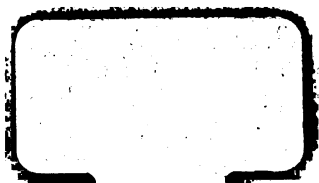
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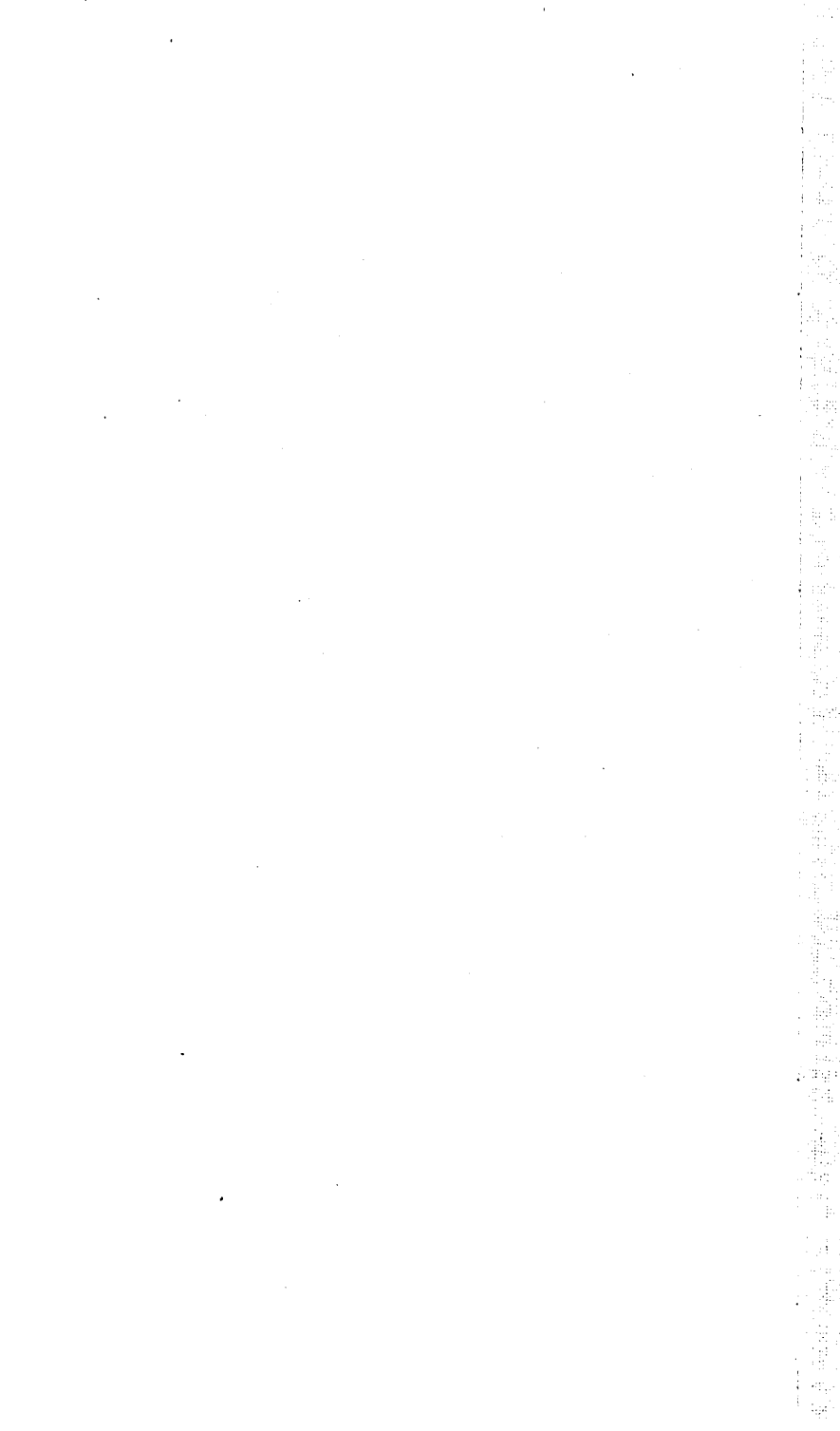
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Report-



A REPORT
OF
THE TRIAL
OF THE
KING *v.* JOHN HATCHARD,
FOR
A LIBEL
ON THE
AIDES-DE-CAMP OF SIR JAMES LEITH,
Governor and Commander-in-Chief of the Leeward Islands;
AND THE
GRAND JURY OF THE ISLAND OF ANTIGUA,
AS PUBLISHED IN THE
Tenth Report of the DIRECTORS of the AFRICAN INSTITUTION.
IN THE
Court of King's Bench,
BEFORE MR. JUSTICE ABBOTT, AND A SPECIAL JURY,
ON FEBRUARY 20, 1817,
TOGETHER WITH
MR. JUSTICE BAYLEY'S ADDRESS IN PRONOUNCING THE
SENTENCE OF THE COURT.

TAKEN IN SHORT HAND, BY MR. GURNEY.

LONDON;

PRINTED FOR WHITMORE AND FENN, CHARING CROSS.

1817.



Printed by B. R. Howlett, 10, Frith Street, Soho.

PREFACE.

THE following Report is published, in the confidence that it will expose the general nature and character of that information, upon Colonial Subjects, which has been lately given to the world, under the sanction and authority of the African Institution ; and that it will prove the most decisive and satisfactory refutation of a part, at least, of the calumnies which have been industriously circulated in this country against the colonies.

These calumnies have been propagated for a considerable time, with an authority, and in a tone, well calculated to mislead the judgment of the public. Declamation

and invective are generally popular; and when coinciding with general prejudices, assume the character and command the faith of truth. Hitherto, and until the publication of the Libel contained in the following trial, these calumnies have been of so general a nature, as to admit only of a general answer, and a general denial, which, coming from interested persons, the people of England have been taught to disregard. This charge, however, is the first which has presented itself in a tangible shape, and though considerable doubts existed among the most eminent of the profession, whether it could be made the subject of a prosecution for a Libel, from its general reference to the whole of the Aides-de-Camp of Sir James Leith, and its want of application to any particular individual, yet the Island of Antigua, from a due regard to the character of its public authorities, determined, even under the discouragement of

those opinions, to take a public opportunity of exposing the utter falsehood of the story in all its parts, however they might fail to visit upon the head of its guilty author any legal measure of punishment. Happily, the result of this trial, and the admirable charge of the learned Judge who presided, have removed all doubt upon this important point in our Law of Libel.

That the story was wholly untrue, no one can doubt. Mr. Justice Bayley, in pronouncing the sentence of the Court, says, "There is no reason to believe, that from beginning to end there is a word of truth in the story, but that it is a wicked fabrication coined *somewhere or other*;" and not merely *coined somewhere or other*, but coined for *some purpose or other*; and that purpose could be no other than to degrade, not Sir James Leith's Aides-de-Camp merely, but the whole West India Community.

To the Island of Antigua, or to the Aides-

de-Camp of Sir James Leith, there could be no particular motive for pointing the Libel; not they alone, not the Aides-de-Camp, or the Grand Jurors of Antigua; were to be the victims of this calumny, but all the Proprietors of Estates, all the White Inhabitants were comprehended in the indiscriminate reproach which this Libel was calculated to excite, and from which not one of the British West India Islands would have been exempt: for the palpable meaning of the Libel is,—‘ this is the state of society in Antigua---this is a specimen of the whole White Proprietary---the whole White Population of the British West India Islands!’—and such would have been the interpretation of it, if this trial had not opened the eyes of the public, and turned the current of disgrace upon those, who either coined the story, or screened its author.

The publication of the trial, therefore, is not merely due to the fortunate deliver-

ance of the innocent, and the just conviction of false accusers ; but it is due to the whole West India Community : and it is to be hoped that it will have the effect also, of inculcating upon those who have been the means of circulating this mischievous falsehood, the moral lessons so well recommended from the Bench.*---But if in spite of the obvious duty of canvassing the truth of their information, they should still continue to publish every gratuitous tale, which may be sent to them from the Colonies, either by their own emissaries, or by wicked and wanton individuals, the good sense and the justice of the British public will find, in this trial, a powerful and a commanding motive, not merely to regard with distrust, but to receive with disgust, any further accusations that may issue from the same quarter : and they will not fail to perceive that these stories are intended for the pur-

* Vide both Justice Abbott's and Justice Bayley's speeches.

pose of accomplishing the ruin of the character and property of the British Population in the West Indies ;—a Population constituting a very important part of the British Nation,—a property contributing very largely to the general interests of the Empire in its leading branches of prosperity,—its Industry, Commerce, Navigation, and Revenue.

MR. SERJEANT BEST,
MR. MARRYAT,
MR. CURWOOD,
MR. FITZGERALD.

} *Counsel for the
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MR. SCARLETT,
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} *Counsel for the
Defendant.*

Messrs. Lambert and Son, Bedford Row,
Solicitors for the Defendant.

(7)

TRIAL

OF

THE KING v. JOHN HATCHARD.

The indictment was opened by *Mr. Fitzgerald*.

Mr. Serj. Best.—May it please your Lordship.
Gentlemen of the Jury.

You have collected from my learned friend who has opened the indictment, that this is a prosecution for a libel. Gentlemen, I have to state to you, in addition to what he has said, that this prosecution has been directed by the Legislature of the Island of Antigua, for the purpose of protecting the characters of a most respectable body of men, namely, the Colonial Aides-de-Camp of the Governor of that Island; for the purpose of protecting what is still more important, the administration of justice in that island; and for the purpose of protecting the lives of all its white inhabitants. Gentlemen, I have no hesitation in saying, that unless an

Institution, from whence this libel has proceeded, can be prevented from circulating the exaggerated and unfounded statements of what is supposed to have taken place in the West Indies, there can be no security for those white persons whose fortune it is, to live surrounded as the white inhabitants of the West India islands are, by a black population—a population rendered by what has passed in Europe, most attentive to what relates to their condition, and which inhales disaffection and insubordination with every breath of calumny on their masters.

Gentlemen, do not suppose that I mean to impute any bad intentions to the society from whence this libel has emanated. I know perfectly well that it has amongst its members some of the most respectable, the most honorable, and most valuable men in this country ; but, Gentlemen, it is on that account that the libel of which I complain is the more dangerous. A pebble thrown from a great height falls with ruinous force ; and, Gentlemen, any thing supposed to come from such persons (for, Gentlemen, do not imagine that I impute to the respectable part of this Association the circulation of any thing so false and malignant as this report), instantly obtains with every class of society the most implicit credit. It is not with any feelings of resentment, therefore, but in the pure spirit

of defence that the Prosecutors come forward. Long have they been anxious to meet those who have without the slightest foundation imputed to the great body of slave proprietors the blackest crimes in this temple of truth and justice ; but until now the distance of the place in which the crimes charged have been supposed to have been committed, and the difficulty of having witnesses here, have prevented them from preferring their just complaints.

Gentlemen, my learned friend, by reading to you the Indictment, has informed you, that the libel therein set forth attacks the characters of the colonial Aides-de-Camp to Sir James Leith, at that time Governor-General of Antigua, and the other Leeward Islands ; and severely reflects on the Grand Jury of that Island.

Gentlemen, having thus mentioned in this short way what the purport of the libel is, I will now proceed to state it to you : it is a part of what is called the Tenth Report of the Directors of the African Institution.

Now, Gentlemen, this is the libel :—“ The
 “ Directors are also informed that about a year
 “ ago the following circumstance took place in
 “ the Island of Antigua :—A gentleman who
 “ held the situation of Aide-de-Camp to the
 “ Governor, Sir James Leith, having severely

“ whipped a negro woman of his own, who was
 “ pregnant ; she laid her complaint before the
 “ Governor, who humanely attended to her
 “ story, and dismissed her with some money
 “ for herself, and a note to her owner.” The
 supposed Aide-de-Camp—the supposed inhu-
 man monster, who in the state in which the
 poor woman is represented to be, a state of
 pregnancy—that state which disarms a man
 approaching to a brute from treating her with
 any thing like cruelty, had thought proper to
 cart-whip her. “ Instead however of taking
 “ his Excellency’s interference in good part,
 “ the Gentleman gave the unfortunate woman
 “ an additional number of lashes, and dis-
 “ patched a note to Sir James Leith, who in
 “ consequence ordered his Secretary ;” (the
 contents of the note are not affected to be stated,
 but we are to presume that it was the assertion
 of this right to treat with inhumanity to any
 extent any unfortunate wretch who is in the
 situation of slavery;) “ to inform the writer
 “ that Sir James Leith had no further occasion
 “ for his services, on the receipt of this in-
 “ formation.” (It is not enough that the woman
 was cart-whipped, that the complaint was made,
 that the consequence was that she had an addi-
 tional whipping, that the master was dismissed
 in consequence, as undoubtedly he would be,

and punished for his conduct ;) but that “ the
 “ Gentleman dressed up one of his negro boys
 “ in his own uniform, and mounting him upon
 “ an ass, dispatched him with an insolent note
 “ to the Governor.” Now, Gentlemen, this
 applies to the Aide-de-Camp. Mark further
 the object of the writer ; which is to shew that
 negro slaves in the West Indies have no pro-
 tection from the judicature of that country, and
 that they are in the most wretched situation
 human beings were ever in from the beginning
 of time. “ He was afterwards (that is the
 “ Aide-de-Camp), indicted for cruelty at the
 “ express order of the Governor, but the Grand
 “ Jury refused to find the bill.” That is, the
 Grand Jury of the Island were so deaf to the
 calls of humanity, and were so little of men,
 that when an appeal was made to them by an
 unfortunate negro, though backed by the sup-
 port of the Governor of the Island, the protector
 of all the distressed in that Island, the Grand
 Jury of Antigua were so corrupt, and so in-
 famous, that they thought proper to refuse to
 find this bill.

Now, Gentlemen, before I proceed further
 let me make this observation :—This paper does
 not merely relate a single fact, which might
 have got into the head of any man by mistake,
 but it sets out a long series of facts applying

to different persons. It is impossible that this narration could have got into any man's head from accident or from misconception of any story which had been told in any part of the West Indies. It is a false, a most scandalous and most wicked invention ; it is invented for one of the worst of all possible purposes ; for the purpose of holding up to the British public, and holding up to the black inhabitants of the West India Islands ; in the centre of which let it be remembered, there is at this moment one large Island, the inhabitants of which have thrown off the white yoke ; in the centre of which there is a black republic. It is for the purpose of holding up to the inhabitants of the West India Islands that those who exercise military functions—that those, who in the situation of Grand Jurymen, are called to administer justice, are so debased by the horrid tyranny which a system of slavery allows them to practice, that no black inhabitant can under any circumstances possibly have any thing like justice.

Gentlemen, if this were true, I would ask you, cost what it may to the British public, attended with what consequences it may, to those who have property in the West Indies, and to those who live there, ought this system to be endured for a moment ? Could a Christian nation permit, for an instant, a government to

stand where such things as these can happen? If that is the conclusion you are prepared to come to (and I am quite sure there is not one of you who is not prepared to come immediately to that conclusion,) can there be a more wicked libel than such a black false representation? aye, false to the knowledge of the man who has written it. Gentlemen, I say again, false to the knowledge of the man who has written it. It must have been invented for the purpose of beating down, by false charges, that cause which cannot be subdued by fair argument.

But it may be said you have not the author here ; you have the printer only. Whose fault is that? It is not the fault of those who institute this prosecution ; for, Gentlemen, immediately upon this libel finding its way to the West Indies, a respectable and honorable friend of mine, who sits behind me, and who holds the situation of Agent for the Island, was directed by the two Houses of Legislature of that Island to call upon Mr. Hatchard, the Defendant in this prosecution, to deliver up his author. Gentlemen, Mr. Hatchard referred us to the African Institution. Mr. Hatchard told us that from that Institution he had published the report, and to them he must refer us for their author. In consequence of this answer of Mr. Hatchard we then called upon the African Institution ; we

desired them to deliver up to us, in order that we might proceed against that person—the man who has dared to circulate throughout the world, this most unfounded, this most infamous, this most cruel slander. Gentlemen, they in their wisdom (I am sure if the respectable persons, whose names I have seen as members of that Society had been present, such an answer could not have been sent ; the answer could only have proceeded from some portion of that respectable Society, who had much more zeal than discretion in the management of the objects which that Society has undertaken to advocate), thought proper to say you may go on against the printer, we shall not give up the author.

Now, Gentlemen, can there be any good reason for this? The reason that it occurs to me may be given, is this :—The man who has sent this information is now in the Island of Antigua, and the Institution would be giving him up to the vengeance of the white inhabitants of that country—Is he there? If he is in the Island of Antigua, he ought to be driven from it instantly, because he then must know that not one scintilla of that which he has stated upon this paper, ever existed in point of fact.—He is too mischievous, too wicked a man to be permitted to continue in that, or in any other Island in the West Indies for a single hour. If

he is not in Antigua, but in this country, there cannot be the least possible objection to giving him up. If given up, we should have proceeded against him ; and we would have proceeded in that way, that he should have had his opportunity of shewing, that he had written that which he has written ; because at the bar of a British Court of Justice he could prove the truth of what he had written, and the consequence of that would be that which I have stated ; that it would call upon the Legislature of this country, at any expence, to provide the means by which the system of slavery, under which human beings thus groaned, should be put an end to. But, Gentlemen, the African Society have thought proper not to give up the author ; and, therefore, I am under the necessity of indicting the printer, as the only person against whom I have any means of proceeding.

Now, Gentlemen, notwithstanding what the Gentlemen reflected upon have suffered—notwithstanding the apprehensions which the inhabitants of Antigua have entertained from the effects of the circulation of these libels upon them, I can assure you, that this prosecution is not instituted in any spirit of hostility ; I can assure you, Gentlemen, if charity constitutes a part of Christianity, there are Christians on

that side of the water, and white ones too, as well as on this. Injured, as they have been, they want not indemnity for the past, but security for the future. They fear nothing that can be said of them, if said with truth. They are not desirous of preventing their opponents from bringing forward any argument that their united talents can produce. For the fair use of argument, the freedom of the press, happily established in this country, will protect them. All my clients' desire is, that when their opponents venture to state facts, they will take care that they are correctly informed upon the facts which they state. Let them recollect that the only protection which the white inhabitants of the West India Islands have, surrounded as they are by inhabitants of a different description, is in the idea that the blacks entertain, that the present state of things will protect their masters against them. If the black population of these Islands are to be told that the white inhabitants have not the protection of this country, that so far from it, a society in which are to be found the highest names, are spreading through the world, papers which shew that the white inhabitants of these Islands themselves must be held in detestation in this country, and are ready to be delivered up to the vengeance of those blacks, is it possible

that the spirit of insurrection can be kept down?

Gentlemen, I never have been in any place an advocate for slavery ; on the contrary, I am one of those who have always thought, and I believe those who send me here think, that if consistently with the justice that is due to individuals, slavery could be put an end to, it ought to be put an end to.—But let us not, Gentlemen, in the eager pursuit of one object forget every other : let us remember, that while we owe humanity to the blacks, we owe the same thing to the whites : let us remember, that if you will abolish slavery, you must either send such a force to the West India Islands as would be sufficient to protect the whites from the emancipated blacks ; or you must remove and indemnify the colonists who have embarked their property in the cultivation of these settlements, upon the assurance of protection from the British Government. If the country is prepared to give them either the one or the other of these things, I think I may venture to state, that there is not an inhabitant in the West India Islands who would not be as happy as any Gentleman whom I have the honor to address, that this system should be put an end to. I am afraid that neither of these means would be justified by the present

state of our finances ; and as our white brethren must remain in the Islands, let us not permit their security to be put in extreme hazard, by destroying that character which is their best protection. Where a spirit of insurrection is excited amongst the blacks, what means have the African Institution to allay it ; what power to protect its victims from its fury. The stoutest hearts will surely tremble at danger, which they can neither stop nor share.

Gentlemen, that the paper that has been read to you is a libel, there cannot I am sure be the least doubt. It will, however, be for his Lordship to say whether my opinion be correct ; it is his Lordship's duty, and no one can discharge it better than the learned Judge, in whose presence I have the honor to address you, to tell you by-and-by whether this paper be a libel or not. If his Lordship shall be of opinion it is not a libel, whatever these respectable Gentlemen may have suffered, there is an end of the prosecution. If his Lordship should be of opinion that it is a libel (and I cannot doubt that that opinion will be delivered to you by his Lordship), there cannot be any defence urged on the part of the Defendant. The Defendant has certainly selected an Advocate, my learned friend the Attorney-General, who sits near me, possessing talents, that if it be possible to offer

any defence, or any palliation of the guilt of this paper, he, I am sure, will offer it; but it appears to me that will be altogether impossible. It appears to me, that you will have a very easy task when you shall have received the rule of law from his Lordship; that you will have no difficulty in applying it to this case, and that the result will be a verdict of guilty.

Gentlemen, unless my learned friend shall think proper to put in certain papers which I have seen, I apprehend that no evidence will be offered, and I shall not have an opportunity of again addressing you. The papers to which I allude may be produced, for the purpose of shewing that something like an apology has been offered for the publication of this libel. Gentlemen, I only in this stage of the cause, not stating what the contents of those papers are, throw in my claim to say, that whether those papers are offered you to-day, as it is competent to my learned friend to do, or whether my learned friend shall reserve himself for the time when this man is brought up for judgment, then to bring forward those papers to the Court. I throw in my claim to say, with respect to those papers, that so far from their offering any apology, they are calculated, I use no harsher word, than most improperly

calculated, in my opinion, to continue the effects of the slander. There is a profession of candour, but there is a sting under the cover of that candour as malignant as the original libel. That, Gentlemen, I beg to state is the manner in which these papers have struck me; if they are produced to-day, you will have an opportunity of judging; if they are produced hereafter, the learned Judges of this Court will have an opportunity of judging, whether the character I have given of them be or be not their true character.

Mr. Att.-General.—I cannot help doubting whether my learned friend can give a character to papers which are not produced; that rather seems to me to be going a good way.

Mr. Justice Abbott.—No, I think he cannot.

Mr. Serj. Best.—Gentlemen, I am exceedingly sorry I have said any thing I ought not; you will consider then that the papers are not produced, and that it stands nakedly upon the publication of the report containing the libel. My learned friend has very properly stopped me.

Mr. Justice Abbott.—The Attorney-General objects to your making remarks upon papers not yet in evidence.

Mr. Serj. Best.—Gentlemen, I am corrected, the papers are out of the question, and your

attention will be to-day confined to this: Is the Defendant the publisher of the paper? Of that there can be no doubt. The remainder will be a question of law; which, however, under a late Act of Parliament, you are to decide; for the Jury are now Judges of the law in cases of libel. But, Gentlemen, upon that question you are directed by the same law to receive the assistance of his Lordship; and I am quite sure that whatever opinion his Lordship shall pronounce to you, that opinion you will follow. I should not have the least difficulty whatever in leaving that question to you, if his Lordship was not directed by the Act of Parliament to give you his assistance, and did not think proper to give you any assistance upon it; for can any man alive doubt, that to impute a crime to another in a written paper (and I suppose it is a crime to cart-whip a woman who is in a state of pregnancy), but let us go on: Can it be doubted that to say of the Grand Jury of an Island, that a bill has been presented to them which they have refused to find, thereby insinuating that they refused to find that bill because they chose to countenance such crimes as this, is to libel that Grand Jury.

Gentlemen, if after you shall have given your verdict, any body was to publish in Antigua, that the Jury assembled for the pur-

pose of trying this cause found a verdict of not guilty because they were enemies to the slave trade ; and because, therefore, they would not find a verdict of guilty against any person who had made an attack upon that slave trade ; can any man doubt that that would be a libel ? Gentlemen, the case is precisely the same ; and it would be placing the Government of this country in a situation, that God forbid they ever should be placed in, and my learned and honorable friend who sits near me in a situation, in which I hope he never will be placed, if Juries were to allow themselves to say they would not act on those principles of law under which papers of this sort have been long holden to be libels, and would adopt some unknown rules for their guide. Such conduct would destroy the liberty of the press, and all other liberty. Unless Courts of Justice act on known established rules, no man can know what is libel or what is any other sort of crime ; we should be in the worst possible state of slavery—a total ignorance of the rules by which we are to regulate our conduct. It is established, that he who calumniates either an individual or public body by any writing, is a libeller. Individuals in high public stations, and the Grand Inquest of Antigua, are by this paper falsely slandered. Gentlemen, the Grand Juries in the

Island of Antigua necessarily require the same protection that the Grand Juries in this country require, and I am sure they will have it from you.

Gentlemen, I have now laid before you the case, and have stated as distinctly as I can the motives which have led to the institution of this prosecution. I shall add but one circumstance more, and I shall leave the case in your hands. Gentlemen, even at this moment, if the African Institution, or Mr. Hatchard the Defendant, whom I consider as identified with them, will give up to us the author of this libel, I will offer to you no evidence, I will suffer a verdict of acquittal to be recorded, if that is done—if it is not done, it is absolutely necessary that I should press for a conviction here, for unless a conviction can be obtained in such a case as this, under the circumstances which it is offered to you, the Legislature, the Grand Jury, the Public functionaries in the Island of Antigua have no protection from the laws of that country from which they went, to that they now inhabit, and to which they have the strongest possible claim to look back for protection.

EVIDENCE FOR THE PROSECUTION.

Paul Horsford, Esq. sworn.

Examined by Mr. Marryatt.

Q. Are you generally a resident in the Island of Antigua?

A. I am generally a resident in the Island of Antigua.

Q. Of what Government does the Island of Antigua form a part?

A. Of the Leeward Island Government.

Q. Of the Leeward Islands, of what description?

A. The Islands composing the Leeward Islands are Antigua, Montserret, Tortola, and Nevis—there are two or three smaller islands of no signification.

Q. Are they all in the West Indies?

A. Yes

Mr. Justice Abbott.—Are these called the Leeward Caribbee Islands?

A. They are.

Mr. Marryatt.—Where you present when Sir James Leith came out and was sworn in as Governor?

A. I was.

Q. About what time was that?

A. As far as my memory will serve me, I think it was about the month of June in 1814; I am not perfectly clear as to the month; the year I am certain of; and it was long before the month of August.

Q. Was he Governor before the 1st of January, 1815?

A. Certainly.

Q. Had he in his office of Governor any Colonial Aides-de-Camp in the Island of Antigua?

A. He had.

Q. Were you one of them?

A. I was.

Q. How many others had he?

A. Seven others.

Q. Will you favour us with the names of your Co-Aides-de-camp?

A. Mr. Thomas Norbury Kerby, Mr. Langford, Lovel Hodge, Samuel Warner, John Horsford, myself, William Gunthorpe, Nicholas Nugent, and George Ottley.

Q. Were those Gentlemen residing in the Island of Antigua? who were appointed as Aides-de-Camp for that colony?

A. They were.

Q. Where they, generally speaking, proprietors of Slaves in that Island?

A. All of them.

Q. Did those Gentlemen, the eight you have named, continue as *Aides-de-Camp* while you remained in the Island?

A. They did.

Q. Till you left it?

A. Yes.

Q. When did you leave it?

A. I left it on the 22d of April in the last year.

Mr. Marryat.—That, my Lord, is a time subsequent to the publication of the Report. I believe you are in the practice of the law yourself in the island?

A. I am.

Q. Is there a grand jury in the island, or for the island?

A. There is a grand jury for the island?

Q. Is it a grand jury for the whole island, or for a district or division of the island?

A. For the whole island.

Q. What situation do you hold in the profession of the law there?

A. At present I hold the situation of Attorney General.

Q. I do not know whether you have Terms or Sessions there?

A. Sessions.

Q. Which are held generally for the whole island?

A. Yes.

Q. Is there a grand jury convened to each of those sessions for the finding of bills?

A. There is.

Q. How often?

A. Twice a year.

Q. You have two sessions a year?

A. Yes.

Q. Would it have been in your situation as Attorney General, to have known of any prosecution directed by the Governor of that island?

A. Certainly.

Q. Were you at any time made acquainted with any prosecution directed or intended by the Governor of that island, against either of his Aides-de-Camp?

A. I was not.

Q. Was any bill preferred, to your knowledge, against either of Sir James Leith's Aides-de-Camp, during his government.

A. There was not.

Q. Could such a bill have been preferred without your knowing it?

A. Impossible.

Mr. Justice Abbott.—I take you to say, that no bill was preferred against either of them, nor could be without your knowledge?

A. I conceive so.

Q. Is it part of your official duty as Attorney General, to be made acquainted with every prosecution. I know in many cases it is so. In Wales, at the grand sessions, the Attorney General of the circuit is acquainted with all prosecutions.

A. In all cases where the King's name is used, the Attorney General appears for the King.

Mr. Attorney General.—It is so in Scotland likewise.

Mr. Justice Abbott.—Yes, the Lord Advocate there appears for the King in all public prosecutions.

Mr. Marryat.—From the date you have given us of your leaving the Island of Antigua, I do not know whether the Tenth Report of the African Institution, had reached that Island?

A. Not that I know of.

Q. During your residence there, were you cognizant of any such transaction, as is alluded to in this prosecution, of any complaint made by a woman to the Governor against either of his aides-de-camp, for cruelty to her?

A. None.

Q. Was any aide-de-camp dismissed during that time?

A. No.

Q. Were his aides-de-camp residing much with him, until you left the island ?

A. Occasionally with him ; never residing in the house with him.

Q. Never residing in the government-house with him ?

A. No; they attended him on duty, but did not make the government-house the place of their residence.

Q. Were you acquainted with any misunderstanding between him and any of his aides-de-camp, on any subject of complaint which had come before him ?

A. None that ever came to my knowledge.

Mr. Justice Abbott.—No complaint against any of the aides-de-camp came to your knowledge.

A. No.

Paul Horsford, Esq. cross examined by Mr. Attorney General.

Q. I perceive that in your two very respectable situations in the island, if there had been such a thing you must have known it, either as Attorney General instituting such prosecution, or as aide-de-camp to the Governor, therefore you are, as I am quite unable to point this to any particular person, whatever it may have

originated in, whether a publication or any thing else, it does not point to any of those gentlemen?

A. Certainly.

Q. Doubtless you were consulted before the indictment was framed; you have named every body who at that time came under the description of colonial aide-de-camp to the Governor: those eight gentlemen were all to whom that description applied?

A. Yes.

Mr. Justice Abbott.—You said, that it did not apply to any one of those gentlemen; what did you mean to say did not apply to any of those gentlemen?

A. The statement which has been made as composing the libel.

Q. You mean, that the facts there stated does not apply to them?

A. No.

Q. Do you mean, that the matter itself does not apply?

A. I cannot say as to the matter, the facts it appears to me, can apply to nobody else.

Mr. Marryot.—You know no matter of fact to point this publication to either?

A. I do not.

Mr. Justice Abbott.—You say, the facts do not apply to either of the aides-de-camp, but

the matter can apply to no one else but one of them.

A. Just so.

Mr. Philip Martineau sworn.

Examined by Mr. Curwood.

Q. I believe you are attorney for the prosecution?

A. I am.

Q. Do you know Mr. Hatchard's shop?

A. Yes, I do.

Q. In Piccadilly?

A. Yes.

Q. Did you on the 30th of October last, buy the book you hold in your hand, at that shop?

A. Yes, I did.

Q. Was it sold by one of his servants?

A. Mr. Hatchard was in the shop at the time.

Mr. Justice Abbott.—Where is his shop?

A. In Piccadilly.

Q. Does that purport to be the 10th Report of the African Institution?

A. Yes it does.

Mr. Philip Martineau cross-examined by

Mr. Scarlett.

Q. Do you know of the publication of any other Tenth Report since that?

A. Yes, I do; I have had it sent me by Mr. Lambert, the attorney on the other side.

Q. You know that a new edition was published?

A. Yes, I do.

Q. In which this passage ———

Mr. Serjeant Best.—I object to that.

Mr. Attorney General.—I apprehend my learned friend is not founded in his objection; indeed I ought to beg Mr. Scarlett's pardon, he will do this better than I can; but I rise to sustain my learned friend's question, to which it does not appear to me there is any objection.

Mr. Justice Abbott.—It will be more regular to hear the objection first, you will better then know how to point your answer to it.

Mr. Attorney General.—I will state what the question is, and then my learned friend may point out his objection. Whether in the new edition sent to him, this passage was not entirely omitted.

Mr. Serjeant Best.—I submit to your Lordship that question cannot be asked; because, as I apprehend, the Tenth Report must itself be produced in order to see whether it does exist or not.

Mr. Attorney General.—My Lord, I take the difference to be on cross examination, and we are here upon intention. This is not the time

for me to observe upon the topics which have been urged, that will come earlier than I had wished for, not but that I thought we might have been in the next cause long ago. I am here to shew, that there was no malicious intention, for that the moment the Defendant was apprized of this, he cut out all that was charged to be offensive, and sent out into the world a new and harmless edition, and not only that, but marking it as having omitted something that was not substantiated.

Mr. Justice Abbott.—I rather think the contents of the written paper must appear by the production of the thing itself. He says, a copy of a new edition has been sent to him. I should think, if you wish to put it in, you may shew it to him, and give it in evidence if you think fit.

Mr. Scarlett.—My Lord, I was not asking a word about the contents. I only ask as to the fact, whether a new edition has been published?

A. Yes, there has.

Mr. Justice Abbott.—I have that down, that a new edition of the Tenth Report has been since sent to him

Mr. Scarlett.—And that is not the copy you now produce?

A. That is not.

Mr. Curwood.—At what time did you receive this second edition?

A. It was after Michaelmas Term; I think in the month of December.

Q. After you had threatened a prosecution?

A. After the bill was found.

Mr. Justice Abbott.—Why should you go into that; is it not sufficient that when that is produced, the contents of it will appear?

Mr. Serjeant Best.—Certainly, my Lord.

The Libel was read as follows.

“The directors are also informed, that about a year ago, the following circumstance took place in the Island of Antigua. A gentleman who held the situation of aide-de camp to the Governor Sir James Leith, having severely cart-whipped a negro woman of his own, who was pregnant, she laid her complaint before the Governor, who humanely attended to her story, and dismissed her with some money for herself and a note to her owner. Instead however of taking his Excellency's interference in good part, the gentleman gave the unfortunate woman an additional number of lashes, and dispatched a note to Sir James Leith, who in consequence ordered his secretary to inform the writer, that Sir James had no further occasion for his services; on

the receipt of this information, the gentleman dressed up one of his negro-boys in his own uniform, and mounting him upon an ass, dispatched him with an insolent note to the Governor. He was afterwards indicted for cruelty at the express order of the Governor, but the grand jury refused to find the bill."

Mr. Marryatt.—Just read what the pamphlet purports by the title to be, whether it purports to be the Tenth Report of the Directors of the African Institution, read at the Annual General Meeting, held on the 27th day of March 1816.

Mr. Law.—It does.

Mr. Marryatt.—It is so stated in the Indictment?

Mr. Serjeant Best.—That is the case on the part of the prosecution.

Mr. Scarlett.—Will you have the goodness to advert to the title page; my learned friend Mr. Richardson, who has the record in his hand, wishes to make an observation upon it.

Mr. Richardson.—My Lord, the title states that it purports to be "the Tenth Report of the Directors of the African Institution, read at the Annual General Meeting, held on the 27th day of March, one thousand eight hundred and sixteen," in words, at full length; the question is, whether it purports so to be, it purports something that is expressed in figures.

Mr. Curwood.—By the statute of George the Second, you must set out the words at length.

Mr. Richardson.—They need not have set it out at all; the only question is, whether if they chose to set it out, they must not set it out as it is.

Mr. Justice Abbott.—How is it in the record? in the title page the “ 27th ” is in figures, and “ 1816 ” is in figures, and so it is in my copy.

Mr. Richardson.—In the record it is in words at full length.

Mr. Marryatt.—In the record it is in words, meaning the 27th of March in the year of our Lord one thousand eight hundred and sixteen.

Mr Justice Abbott.—I think that is its fair import.

Mr. Attorney General.—There is one other circumstance I just mention to your Lordship. I am not at all anxious about these things, but I am sure your Lordship’s accurate eye in looking into these documents, has not failed to observe, that there is a character ascribed to Sir James Leith which has not yet been proved; the learned Attorney General of the Island, has told your Lordship, that he was present when Sir James Leith was sworn into the office of Governor; and I have not called for, I am not entitled to call for, his commission; it is enough, that he acted as Governor, if

that was all that they charged, but they have said that he was Governor and Captain General of the Island. Now it may be, that very often these two commissions may be united, but it is in the power of the crown, and at the volition of the crown, whether they should be united or not, and it might be that it might be extremely proper, and therefore in the will of the crown, that the Governor should be a Civil Magistrate not of a Military character at all, and that the Captain General, who would not be wanted for his civil capacities, or for his knowledge of the great civil affairs of the colony, but who might be wanted for his transcendent military character, for he might be transcendent in military character with little acquaintance with the world as to civil affairs, might be a different person, and that the characters might be disunited. Now they have alledged that he filled the two characters, but they have not proved that.

Mr. Serjeant Best.—I was not aware that that had not been asked ; probably your Lordship will save all discussion, by allowing the question to be asked.

Mr. Justice Abbott.—Yes, I think so.

Mr Attorney General.—My Lord, I apprehend that cannot be. I would submit that though the fact of his being sworn in as a

Governor can be proved by a person who saw the act of his being sworn in, yet as we know in some of the West India Islands, that the Noble Duke for instance, who at this time fills the situation of Governor of Jamaica, has expressly the character of Chancellor, the Noble Duke having no more qualification for the office of Chancellor, than belongs to a man of excellent understanding, highly cultivated, and well bred and well educated. Yet, he as Chancellor sits as much to decide causes in Equity, as the noble and distinguished officer of the crown sits on the other side of the Hall, to discharge the duties of Lord High Chancellor; still I admit, that if any man were to say, I saw the noble Duke take the Holy Gospels in his hand—

Mr. Serjeant Best.—I will state what I mean to ask, whether Sir James Leith has not acted as Governor General.

Mr. Justice Abbott.—I think they should ask the question.

Mr. Attorney General.—Does your Lordship think that after they have closed their case, they should now be let in to ask that.

Mr. Justice Abbott.—Yes, I think so, on such an objection as this.

Mr. Marryatt (to Mr. Horsford) what is the description of Sir James Leith's character in the West Indies?

Mr. Attorney General.—No, now my learned friend does not put it correctly, and that is from my learned friend keeping at an awful distance from his client, and those who are united with him.

Mr. Marryatt (to Mr. Horsford).—Did you see him act as Captain General and Commander in Chief?

A. I have seen him act in all the characters, Captain General is united with all the other characters.

Mr. Justice Abbott.—Did he act in the united character?

A. He did.

Mr. Attorney General.—Are you not now speaking from your memory of the contents of a written commission?

A. No, I have seen him act, and I am sure my memory of the written commission is perfectly correct.

Q. I do not like your memory of the written commission; for if I was in the Island of Antigua, I am sure you, as Attorney General, would not let me talk about the contents of a written commission.

A. I have seen him act.

Mr. Marryat.—You have seen him act?

A. Yes; all commissions issued to the Militia are in the character of Captain General.

Mr. Attorney General.—In the Island of Antigua you have seen him act ?

A. I have.

Q. Have you ever seen him act in any of the other Islands called the Leeward Charibbee Islands ?

A. No, I have not.

Mr. Marryatt.—Are there separate Governors of the different Charibbee Islands ?

A. They are all part of the same government.

Mr. Attorney General.—That depends upon the commission, for it is in the power of the crown to separate them.

Mr. Justice Abbott.—It is in the power of the crown to separate them certainly : you were present when he was sworn in.

A. Yes.

Q. Was he sworn in as Captain General and Governor of the Island of Antigua, or as Captain General and Governor of His Majesty's Charibbee Islands ?

Mr. Attorney General.—I owe much of apology for what I am about to urge, but I will take this as a question, suggested by my learned Friend, Mr. Marryat, and therefore will take the liberty of observing upon it.

Mr. Justice Abbott.—By all means.

Mr. Attorney General.—I submit to your Lordship, that is asking the contents of the

commission. I do not object to its being asked, whether he was sworn in as Governor, and if it inevitably followed that that carried with it the character of Chancellor, Chief Justice, or Captain General, then that would carry all the consequences of those offices with it; but I would submit to your Lordship, that his being sworn in as Captain General of all the Charibbee Islands cannot be by parol.

Mr. Justice Abbott.—Will you sustain your question Mr. Marryatt?

Mr. Marryatt.—I submit to your Lordship, that whether it is a swearing-in as Governor of one Island or several Islands, is the same thing.

Mr Justice Abbott.—I should have thought so, if it was Mr. Marryat's question.

Mr. Attorney General.—I am quite satisfied with your Lordship's opinion.

Mr. Justice Abbott.—In what character was he sworn in, as Captain General of the Charibbee Islands, or as Captain General of the Island of Antigua?

A. Captain General of the Charibbee Islands; there is no such office as Captain General of the Island of Antigua.

DEFENCE.

Mr. Attorney General.—

May it please your Lordship.

Gentlemen of the Jury,

I rise to endeavour to perform my duty to Mr. Hatchard, under circumstances which are certainly rather novel, and not remarkably agreeable to the person who has to perform that task. The course which my learned friend, whose avocations have called him elsewhere, has pursued not retiring from it while he had any thing else to do, but having performed all the duty which he to-day owes to those who, to use his expression, have sent him here: the course he has pursued is an extraordinary, and I think rather an alarming one, for he tells you, that he has been sent here by the command of the Legislative Body of the Island of Antigua. The Legislative Body send my learned friend here as the prosecutor for an alledged libel against some individual, who formerly constituted a part of the community of that island!—I will venture to say, in the hearing, and subject to the correction of as learned and as well informed a person as ever

presided in the seat of justice, that the thing is done now for the first time. I know that persons who have formerly, much to their own honor and to the advantage of the country, filled the office which unworthily compared to them I have now the honour to fill, have been instructed to prosecute before juries, that often and often they have been so ordered by the Commons House of Parliament to prosecute, but in what case, for libels against private individuals, to whom and to each and every of whom, the courts of our country are open to receive their individual complaints, and who ought in this place, at least in this sacred sanctuary of justice, to meet those whom they would accuse without any extraordinary or unnatural influence to be cast into their scale. The cases—the only cases in which any thing is admitted that in the slightest degree differs from that which I state to be the condition of all English subjects, is the case where for the protection of the whole community, a branch of the legislature commands its officer to institute a prosecution for something that affects the security of the state; but it is the first time, in the course of a longer experience in this place, than considering that the days pass on, and that one is hastening forward to the conclusion of them, one has a pleasure to recollect, after a long experience in

this place, it is the first time, that my mind has had the infliction of being told, that the prosecution against which I have to contend, was instituted by the order of any legislative body. If my learned friend were here in a condition by the rules of the court to reply to me upon this topic, I know perfectly well, the fertility of his mind and the resources of it, and that he would have something that might least for a moment stand in the place of an answer to the observation; but when it comes to be examined, it vanishes into empty air—it has nothing to do with it.

My learned friend, let it be recollected, in stating who it was that sent him here, refers to the very respectable gentleman whom he designated as his honourable friend.—I am afraid I dare not presume so far—it supposes something of intimacy with him, of which I have not the honor; I respect the honourable individual though I cannot claim his private friendship. My learned friend stated, without any qualification, that this prosecution in all its parts is instituted for this purpose and under these orders. What! the eight colonial aides-de-camp of the deceased Sir James Leith are to have the whole weight of the Legislative Body of Antigua to bear down a London Bookseller, who is supposed to have committed an offence

against them?—but my learned friend (for it would have been much too bold to have stated that in an English court of justice) states that this forsooth is a libel on the administration of justice, and of the various objects which he states to belong to the prosecution, on some of which it will be my painful duty to make a few remarks to you ; one of them was to preserve the administration of justice in His Majesty's West India Islands pure, and to protect the characters of those who are assembled for the purpose of giving purity to that administration, and it is supposed that the Tenth Report of the African Institution is a libel upon the Grand Jury of the Island of Antigua.

Gentlemen, it is a stalking-horse in order to captivate you and to run away with you, to talk of this being a libel upon the Grand Jury of the Island of Antigua. What is it that is said of the Grand Jury—I pass by the rest of it to return to it presently—to dismiss this, which I state to be an attempt to carry away unfairly your sober judgements, and to make you believe you are called upon to do that to day which you would do readily and willingly on any occasion to protect the pure administration of justice in the most remote part of His Majesty's dominions.—What is said here? that a cause of complaint was presented to the

Grand Jury of the Island, and that they refused to find a bill; to which my learned Friend, without the least alteration of the tone of his voice, says because in the West India Islands, every man who constitutes one of the Grand Jury, keeps slaves—every man there has an interest in holding up every thing which his neighbours do in the treatment of slaves, and therefore when you present a bill to the Grand Jury, even by order of the Governor, a thing better spared than practised, you cannot get justice done if the matter be the ill treatment of a slave. Why, Gentlemen, if that had found its way into the report of the African Institution, I should have found the labours of to day much more severe than they are. If the reporter had said the Grand Jury of the Island of Antigua refused to interfere, however plain the question before them, if they had viewed the dead body of a slave, who at an advanced period of her pregnancy, had had that which, thank God, we know only by the reports of the treatment, which it is supposed has sometimes obtained in these scenes of melancholy inflictions. I say, supposed to have sometimes obtained, if it had been said upon a view of a dead body, and a charge of murder against a white master, the Grand Jury had passed on to other matters, and had refused to

find a Bill, they would not have heard my voice saying that it was not a Libel upon them; but is it a Libel upon them to say merely that they refused to find a Bill!—Look to the tables before Parliament, and see how persons accused before Magistrates in this our country, are dealt with, and you will find, that the number of those against whom Bills are presented before Grand Juries, and who are put upon Trial, is every year much smaller than that of persons who have been charged before Magistrates. I think I could venture to say, that there is not a year in which there are not very many scores—I should think some hundreds in London and Middlesex alone—against whom complaints have been made before Magistrates on Oath of the commission of Felonies, which charges notwithstanding the Grand Juries returned, saying—not that there is no foundation for the charge, and that the party is innocent—no, but saying, “Ignoramus—we do not find the Bill.” Now, all that is said against this Grand Jury of the Island of Antigua, is, that a Bill of Indictment was ordered by the Governor to be presented to the Grand Jury, but that it was not found. This is charged as a Libel. Mr. Hatchard, who is a mere scape-goat, to whom in the beginning, the middle, and the end of my learned Friend’s speech, there was an invi-

tation that he should make his peace on very cheap terms, if terms could be cheap which involved a dereliction of his character and his honour; and the African Institution might make their deliverance upon very cheap terms, if baseness were consistent with those principles on which they have acted in the administration of that Institution. My learned Friend has thrown out, that upon these cheap terms, if they do not appear to men of honour to be extremely cheap, Mr. Hatchard may to-day go free.

I am much more anxious as it respects the character of the publication, and those from whom the publication proceeded, either as it respects the original information communicated to them, upon which they acted in the most perfect good faith, and in the persuasion that they were stating that which was capable of proof, and proof by very many witnesses; I am much more anxious to deliver the author, the printer, and the publisher, from any imputation of a Libel upon the administration of Justice, than upon that which remains afterwards to be discussed.

Now, Gentlemen, we are come to consider what remains upon this record; and here I persuade myself, that I shall have no difficulty in carrying my Lord along with me in the ob-

servations I have to make.—What is a Libel? A Libel is a slander against the character of some individual; and if that individual will come into Court in order to complain that he has been traduced by a written Libel—if his name be John Thomson (to borrow a name for the purpose), and the Libeller says of John Thomson, that he has been guilty of any crime which renders him a disgrace to society, he has nothing more to do than to say, that he published that Libel of John Thomson:—but, if intending to libel John Thomson, the Writer of the publication says, a certain man who lives at the corner of a certain Street, near to a great Square, and who has in his window a golden cannister, committed such and such a crime, John Thomson cannot come into Court, and say that is a Libel of and concerning him, without doing something more; he must alledge, that that description of the man who lives at the corner of a certain Street, near to a great Square, and who has in his window a golden cannister, is of and concerning him John Thomson:—and it is not enough, that he puts it upon the Record, but he must prove it by some person who will swear that he understood it to relate to John Thomson; and then it is open to those who conduct the defence, to ask the cause of his belief.

Gentlemen, I will not mention the name, but I remember very early in my professional life, before I was called to the bar, being present when one of the most illustrious characters of the period in which we have lived ; who very soon left us to serve his country in a most distinguished station, and most difficult in which his country could require those services—I mean Mr. Pitt ;—and another great man, a friend of mine, the present Lord Erskine, being concerned for a person charged with a Libel ; the description of the Prosecution was, that he was tall and proud. A Witness was called into the box, to say that was of and concerning the Prosecutor, and the Witness was cross-examined.—“ Do you mean to say that Mr. A. B. the Prosecutor, (I choose to call him so to avoid the name) is tall and proud ? ” “ Why, you will agree with me he is tall. ” “ Yes, yes, but will you say he is proud ? ” That was a difficult question to the friend of the man described as proud ; but the Witness felt no difficulty, he said, “ To people in general I have no doubt that the person of whom you are speaking is considered to be proud ; his manners are retired with respect to strangers ; I, who have been honoured by his acquaintance and intimacy, know that he is very affable and a very kind man, but I have reason to believe

those who do not know him so well consider him as proud:" there are two qualities, one which does belong to him eminently, for he is tall; and the other, that the world ascribes, that he is proud. Now to apply that: suppose among the Aides-de-camp of Sir James Leith, there had been any Gentleman remarkable, not for that for which I have no doubt in the world the learned and respectable person who has been called as a witness, the Gentleman to whom the Island had to look for advice as Attorney-General, was remarkable; suppose he had been distinguished for some extraordinary absurdity of manners, or some extreme deformity of person, and a person had said that soldier, that remarkable Aide-de-Camp of Sir James Leith, that man who was always dancing about like a merry-andrew; suppose he had Saint Vitus's Dance, or any malady which made him a little unsteady, or without putting that which might give any body offence, describing some personal remarkable circumstance about him, and then it had been said why he cart-whipped his slave four months gone with child; this was represented to the Governor, the Governor reprimanded the Gentleman for it, gave the woman some money, and told the Gentleman he had no further occasion for his services: upon which this dancing Gentleman, following up the

description I have supposed, took offence; dressed up one of his slave-boys in his own uniform, and sent him with an insulting message to the Governor. Suppose the Gentleman's Brother had been called, and asked—whom do you understand to be represented by this Aide-de-Camp, who was reprimanded by the Governor?—he would say, my Brother, the Attorney General, because he is described by a circumstance which belongs to him; he has a complaint which makes him unsteady in his walk; and I am sure, by his being described as dancing about, every body so understood it. If that had been charged as a Libel of and concerning this Gentleman, it would have been a question to be left to you, whether the Libel was not meant to apply to the Gentleman to whom it was stated to allude; not that I mean to put any case disrespectful to the learned Gentleman, who has been called in; all I say, I mean to treat him with the greatest possible respect.

But let us now come, Gentlemen, to the Libel in question, and see whether there is a possibility, whilst the law of England continues as it is, that Mr. Hatchard or any body else can be said to be within the present Indictment. The Libel itself speaks of one individual, and one individual alone; not of eight, not of any

number exceeding one, but one individual alone, and without any thing to separate him from the other seven Aides-de-Camp, who were equally Colonial Aides-de-Camp to Sir James Leith, at the time to which it has reference. What is the evidence we have upon the subject? is there any application of it to any one of them? The learned Attorney-General tells you, there were but eight Aides-de-Camp in the Island.

Mr. Richardson. The Indictment charges it to be a Libel of and concerning some one of the eight.

Mr. Attorney-General. Gentlemen, pursuing that I was speaking, of the evidence—and it is convenient what my learned Friend has suggested to me, because this is the proper place to call your attention to it,—the Libel is of and concerning some one of eight persons; you cannot say, by your verdict, we are of opinion Mr. Hatchard has published a Libel of and concerning some one of eight persons; it would be a bad verdict. You must say, upon your oaths, we are of opinion, upon the evidence before us, that the Defendant is guilty of publishing a Libel against A. B. or C. D., or any other of the two combined letters in the alphabet, describing Christian and Surnames,—he is guilty of publishing this of and concerning one particular individual: let us see who you can say—

was it the Attorney-General, Mr. Horsford? I asked the Witness: he says, No; there is nothing that points to me particularly; it would be easy to point to me:—he might say, a man holding, and if he meant to apply this to him, holding and designating one of the highest legal situations in the Island; nobody after that would have doubted, that he united the character of Aide-de-Camp to Sir James Leith, held the highest legal situation short of that of a Judge in the Island. If it was said of a person so designating him, who could have doubted it meant Mr. Paul Horsford, the Attorney-General? But he goes on and tells you, it is impossible for any man alive to single out any one of these persons to whom it is supposed to apply, more than to another; for as to all of them it is false. I had the means of knowing, he says, if any such complaint was made to the Governor; I must have known if any Indictment was preferred, and the draught of it must have had my signature to authorize its going to the Grand Jury; I must have known of the reprimand of the Governor, and the dismissal of the Aide-de-Camp; and I cannot give you any one by conjecture, imagination, or guess, on whom you can affix this: but there is not one of the eight to whom you could, and if you called not only me, but if you called the whole

White Population, there is not a man who could tell you what name you could assert in a special verdict, that Mr. Hatchard was guilty of publishing this of and concerning that individual.

Now, Gentlemen, let us see a little what belongs more to the case now presented before you. I am one of the last persons who ought to attempt to mislead you upon the Law that belongs to this case ; but to be sure, before you find Mr. Hatchard guilty, you must be persuaded he had an intention to fabricate some story to bring these Gentlemen, or some one of them, (leaving it to find its way into the eight as it might) into disgrace or disrepute. Gentlemen, I regret exceedingly the course which my learned Friend has been ordered to take. It is one of the illustrations of the mischiefs which cannot fail to attend the Legislative Body ordering Prosecutions. It will be much better to leave persons who feel that their individual comfort, satisfaction, and character, have been broken in upon, to find their own way, which they do, without the slightest difficulty, into a Court of Justice, to seek redress ; rather than to attempt by influence and authority, to give effect to that which wounds neither their individual comfort, satisfaction, nor character, if it be founded in fact and jus-

tice. My learned Friend is ordered to take the course he has taken to-day. To me who have known him thirty years, who have been acquainted with his discretion and prudence in the management of business, it was not necessary he should tell me he was acting under orders. It is an expression we should use as to a particular Client, who orders one not to refer a Cause, or to call Witnesses, when one's own judgment inclines one not; but here is a Legislative enactment of the Island that Mr. Serjeant Best shall be called here—he has an advantage, that he is a Legislator here; and there is an Act of the Legislature of Antigua, ordering him not only to conduct this prosecution, but to conduct it in a certain mode and manner.

Gentlemen, my learned Friend, in his other character of a Member of the British Legislature, has an opportunity of discussing all the topics he has addressed to you to-day; and he cannot exercise it too often, either for his own honour and credit, or for the instruction of those who hear him, and to assist in the deliberation of great matters of state. I am sorry that my learned Friend, who has an opportunity of discussing all these questions on the effect of Policy to be exercised as to the Afri-

can population taken from home and transplanted into the West Indies, or the conduct of Whites towards them, or the effect of regulations there, should have thought this a convenient place to introduce those topics. I will abstain from following the example. I am one of those who think there is much mischief in these discussions, and that wise men would have paused a good deal, before they would have suffered themselves to be compelled to institute a prosecution, to vindicate character from a Libel, against an individual, that might by possibility be attended with such consequences. My learned Friend knows, because it is one of the things of which these Gentlemen complain, that that population to which he has alluded, and which I shall keep as clear of as possible, are persons who read, and read with avidity, every thing that passes in this Country with respect to their condition;—that every thing that passes in another place, (where it must pass, where it is not matter of choice whether it shall pass or not, where the interests of the community, including their happiness and comfort, are paramount considerations, which must have their period and day for deliberation, discussion, and determination,) is read by them. I say, a wise and prudent man would have paused a good deal before he came into a Court

of Justice, if he could avoid it, to urge any of those topics, so inflammable, so dangerous, so capable of misrepresentation and of inflammation, to the extent my learned Friend has put them.

Sure I am the present prosecution might well have been spared. What is it that induces any man to institute a Prosecution for a Libel?—Are there not many persons here, besides the Speaker, who have been the subjects of Libels, and Libels out of number, who have not thought it necessary to obtrude them on the consideration of Courts of Justice? But there sometimes arrives a period at which a patient man, who is not disposed to make his complaint, may find it necessary, notwithstanding, to come where he believes there is a malignant Libeller, who, for the purpose of destroying his fame, and ruining his peace and that of his family, puts into the world knowingly and purposely, and for the purpose of mischief, that which he brings into Court in the shape of an Indictment for a Libel to punish the offender.

Now what is the character of that on which you are called on to-day to decide; and what is the object of those who have sent my learned Friend here, under the Legislative order, to make these the subjects of discussion, knowing that what passes here will be read in Antigua?

—And it is the knowing that, that makes me acquit myself of the duty I owe Mr. Hatchard little satisfactorily to myself. I am ill at ease, God knows. I do the best things badly, but I am far short of feeling satisfaction here: when I am about to submit a sentiment to you, I am pulled back by the spectre of the consequences that would arise. I feel that however causelessly this is brought here by those who have sent my learned Friend, I must endeavour to do my duty as a good Citizen to the State, as a friend to the Black Population of the West Indies, and no less a friend to the White; for where in Britain can be found a man who can feel a disposition to be an enemy to the White Population? I hope they have not got the length of saying, every White man must be an Enemy to the Whites in the West Indies, who wishes to increase the security, and exalt the character of those who constitute that population, by exterminating abuses which in every community are unfortunately to be found. Unless such men must necessarily be the enemies of the White Population of the West Indies, there is no person who feels an interest on my side of the case, who is not only not an enemy to them, but who does not show in every moment, and does not feel in every pul-

sation of his heart, that he is the kindest friend of that population. My learned Friend talks of numbers and physical strength, and talks of the comparative condition of this part of the community and the other. This I will say, if any body thinks it worth while to remember what I say, that the best protection is kindness and Christian affection, to those placed under their authorities, and that those who have laboured to bring forward this reformed and improved condition, are the best friends of both.

Now, Mr. Hatchard the Bookseller, he wants no introduction in this place; he is one of the most respectable of the Tradesmen in the metropolis; he has been carrying on a business, always attended with peril and danger, in a manner to exempt him (until the Legislative Body of Antigua have ordered him to be prosecuted), not only from prosecution, but from reproach. Look at the shelves of his warehouse, the contents of them are calculated to promote and increase science and useful knowledge; to enlarge the sphere of the moral fitness of mankind; and I will venture to say, that no man who will go out a purchaser from his shop, can make a selection which has not the object of making him a better man than he was before the purchase. This is the man to-

day brought before you, for publishing a Libel on the Grand Jury of the Island of Antigua; an unnamed and undesignated individual; a not-to-be-found individual. I am obliged to take liberties with language, to describe the anomalous condition of men—not-to-be-found. —This man of virtue and integrity, is supposed to have published this, with a view to traduce the character, either of the Grand Jury in its aggregate character, or some one of eight individuals who fill the character of Aides-de-camp of Sir James Leith.

Well, but my learned Friend is not ordered by his supreme authority to consider Mr. Hatchard meant any thing wrong—he did not tell you so—he does not state it if he had been; and I am sure he would tell you he believes, Mr. Hatchard never read the Tenth Report till after the prosecution. But a Bookseller, who sells a book, must be taken to have read it. I am not attempting to deceive you; but Mr. Hatchard, by my learned Friend, is considered so innocent, that you could not fail to observe, how concerned he was to let him walk away and tell his family: ‘Oh, it was but a summer’s cloud, there is no interruption to our happiness, nobody believed I was malignant! I was the instrument of doing something that brought

me within the form of an indictment, but there is no harm done, and I go free.' Upon what terms? Why, says my learned Friend, only give up your author, that is all we want of you. And then my learned Friend's own mind immediately suggested to him the probable condition of the author. He is in Antigua, says my learned Friend—Is he in Antigua?—give up your author—he knows that Mr. Hatchard cannot give up his author.

Well, but then the African Institution, what will you do about them? Why, I have told you already, they have not desired me to conceal it in their title-page; it is stated to be the Tenth Report of that African Institution. Why, I think, we might as well have had an Indictment against them. My learned Friend gave us a hint at the persons composing that Body. It would have been a very good Indictment, on the precedent of the present, to have said, that all the African Institution, or some one of them, (I have seen such Indictments, where they know very little about Indictments), that all or some one of the African Institution published this, and therefore, you the Jury, be so good as find out some one; I will give the names of all, and as it is published in their names, find out one which you can say you

will find guilty of having published it. Well, but the African Institution published this with a malicious intent to injure either the Grand Jury, or some of these individuals, the Aides-de-camp of Sir James Leith. The African Institution consists of persons who I hope will be spared, by the providence of God, long to add to the blessings they have for many years been conferring on their country, in various forms and shapes; and if it should please God now to make an end of their useful career, we shall, as to some of them in particular, find their title in the page of history amongst the most illustrious benefactors of mankind. They have been labouring incessantly to break the chains of bondage, and to prevent the scenes of horror, desolation, and bloodshed, which tore parents from their children, and children from their parents, and took them to a foreign shore, to endure great hardships in the voyage, their lives not being mended after the transatlantic voyage—they have for twenty years been labouring, with splendid co-adjutors, who are gone to their silent graves—and have found still much to be done. I repeat it again, they have done it for the benefit of the Black Population, and at the same time for the benefit of the Whites, by whom they are surrounded.

In their anxious desire of doing this, they communicate to each other, and by the press to the public, the reports of the transactions of the Institution of which they are distinguished members : they cannot record the transactions in the West Indies as Eye-witnesses ; but they have instituted the means of intercourse and correspondence with some of the most respectable persons to be found there, from whom they receive what experience has taught them to be authentic, correct, and fair representations of scenes they think it necessary to communicate. May it not happen—must it not happen, in the state of things in which we mortals are placed, that into all such transactions error occasionally may creep and be introduced? May it not happen that a humane and benevolent person, known to be corresponding with the Institution for bettering the condition of the people of Africa here in England, may be imposed upon by benevolent persons who wish to promote their object, who are themselves imposed upon as to the fact they narrate, and perhaps in too glowing colours observe upon? Is it quite inconsistent with our experience to believe, that those who are anxious to make these subjects, subjects of public and popular discussion, to have them made the subject of

tract upon tract, and treatise upon treatise, till we are tired of the postman bringing them to our door;—is it quite inconsistent with our experience to know, persons may be found in the community of the West Indies, who will send what they know to be false, to a person who they know is likely to communicate it to those whom he corresponds with at home, to draw their reports into disgrace, and make them afraid of going on with the work, to bring them into disrepute.

Well, but my learned Friend says, ‘Mr. Hatchard, give up the author:’—he knows he cannot; but says he, ‘Now let the African Institution give up their author;—what have they done to quiet the feelings of the Grand Jury of the Island of Antigua; or the unnamed, undescribed, not-yet-found Aide-de-Camp of Sir James Leith?’—What have they done—why, my learned Friend told you, that by possibility you might hear of some papers which have been published by the African Institution, that if they should be produced—now that was very safe—without telling you a word of their contents, he says, if they should be produced, I will convince you they are much worse than the original thing of which I complain; they are not produced, and I will not go a step beyond what the evidence entitles me to go. I

have received instructions from my Lord how far we can go on the subject ; but this I will state to you, that the Tenth Report, containing that piece stated to be a Libel, was published, and afterwards omitted in a second edition, which was in the hands of Mr. Martineau, the respectable Solicitor for the prosecution. Very well ; has any thing been done by this unconscious offender ? by this man who believed every syllable, and every iota of that which was committed to paper, to remove the effect supposed to be produced by this publication ? My learned Friend says, ‘ Give up your author ; ’ I said just now that would be cheap, because we should have gone away, or gone to the next cause long ago : but if these persons had done that, what would have been the consequence ? My learned Friend says,—A pebble that falls from a height, falls with a weight ; according as men by their extraordinary virtues have exalted themselves, condescend to acts of meanness, baseness, and treachery, so their fall, like the fall of the fallen angels, is more to be deplored than the fall of ordinary men, who have not raised themselves to that elevation : and what is proposed to those Gentlemen of whom my learned Friend cannot speak without covering them with praise, and mentioning them in the manner in which the whole world esteem

them? What is proposed, is this:—You did not fabricate this; we know you are above doing it, Mr. Hatchard; we know that you received it from some correspondent in the West Indies; give us the name of your correspondent, and you shall go free. Gentlemen, I wish I could, as an individual, claim more of intimate knowledge with these illustrious Persons than I can presume to do without arrogance and vanity; but I should have no hesitation in saying to them, in their congregated character,—and to each of them, Royal and Illustrious as one is, and not more distinguished by his descent and title, than by his virtues and inestimable qualities,—I should take an opportunity of saying, or if not, I should feel—You have forfeited your claim to public estimation, you have laboured long to pass your life honourably and for the benefit of the public; but in a moment of folly, to protect yourselves from the conduct of the Legislature of the Island of Antigua, you have forgotten all that is due to the labours in which you are engaged, and the character to which you are exalted, and to his ruin and destruction given up a man who without intending harm has sent a communication which you have innocently passed into the world. The thing is impossible: these Gentlemen, at the time they printed it, believed it; and if the Island of Antigua come here, which I do not mean to

question, that the matter may be examined in one of our Courts of Justice, and that if injury has attached upon any person, his character may be restored; all that they have had, my learned Friend knows they have had it long ago; but if it were necessary here now, not for me the humble Advocate, but in the name of the Institution, who are called upon by my learned Friend, or I would not introduce them here to-day;—I say, that which they do not say tardily now—which they do not say in the last moment when they are on trial for their character, and when Mr. Hatchard is on trial, whether guilty or not, but which they have said as soon as they could with justice and truth say it—and in no sparing terms—they have a perfect conviction, that the story as it is related, with respect to any of the Aides-de-Camp of Sir James Leith, upon the record read to you, has been transmitted to them by a person who believed every thing he wrote; but they are satisfied there is no foundation for it. I have told you I would not go beyond that which the evidence justifies, and I will not. The Tenth Report has been published, containing this—the Tenth Report, a new edition, has been published—strictly, I cannot ask what it contains.

Mr. Justice Abbott.—Even if you had it in evidence, it does not apply.

Mr. Attorney General.—No, my Lord.—Gentlemen, I will not trespass on the rule of Law laid down by my Lord, I will not ask what it contained ; but in the first edition the Libel complained of was published, and the African Institution has published a second edition, in which it is omitted.

Gentlemen, I regret having taken up so much of your time ; but I found it necessary to take some notice of my learned Friend's address, having taken care to take as little as possible, because I know that this Case ill deserves it, except as it may be made the instrument of mischief ; for it will find its way to those places, where every thing that is said is capable of great mischief. I need not recapitulate points, because my Lord has attended to the points. I say, there is no proof here of any application of this Libel to any person you can name ; and as it is not a Libel on the eight, as if it had said—These Gentlemen all Sir James Leith's Aides-de-camp are a set of Raggamuffins, they got together in a Brothel, and broke the windows, and so on—that would be a Libel on the eight : but you have no Aide-de-camp pointed out. I do not repeat the arguments of the perfect innocence of the intention of Mr. Hatchard, or of those whose instrument he was ; but I submit, under my Lord's direction, there is not

that upon which you can say—We, under the solemn sanction of an oath, think he is guilty of publishing a Libel on one of the eight.

Mr. Marryat.—I apprehend that it will not be improper for me——

Mr. Attorney General.—My Lord will state the Law.

Mr. Marryat.—I will state an authority to show it is a Libel on the eight.

Mr. Justice Abbott.—If Mr. Marryat had not rose as he did, I was about to invite him to do so, I was about to put this question. Upon the evidence, it seems to me it is not fixed as a Libel upon any one of the eight; it struck me therefore to ask Mr. Marryat how he could maintain any of those Counts in the Indictment, which charge this to be a particular Libel against one individual. Then there is the first Count, which treats this as a Libel upon all of them. A slander in language of the ambiguity which this pamphlet contains—namely, that one of such persons has done so and so—may be calculated to excite a suspicion in the minds of the public against each of them; and as your first Count is adapted to such a Case, I will point out the difficulty in a little detail. The first Count relates the Libel to be of and concerning the eight by name.

Mr. Marryat. I have a case in my hand, my

Lord, which answers the inquiry in the most decisive way: and I was surprised at my learned Friend the Attorney-General addressing that point, that because the Libel could not be attached from its inapplicability to any human being, to any one rather than the rest, it was not a Libel; because this Court has decided, in former times, and there is no authority to impeach it, that where a Libel is specifically pointed at one of a given Body, with nothing to designate him, with nothing to apply it to one rather than the others, it is a Libel on all. The authority I refer to is *The King v. Jenour*, in 7, Mod. 400, where the Libel was of and concerning an East-India Director; not naming him, not pointing him out specifically, and nothing to direct it to one of the twenty-four rather than the others. They joined in an application for a criminal Information to be filed in this Court: it occurred during the time Sir George Lee was Chief Justice. Mr. Solicitor-General and Mr. Brown moved for an Information against the Defendant, for printing and publishing a Libel against the East-India Company, in an Advertisement in a Paper called 'The Daily Advertiser,' dated October 8th, 1739, in the words following: "Whereas an East-India Director has raised the price of Green Tea to an extravagant rate; the same

Gentleman being concerned with the Swedish East-India Company, the English proprietors hope he will find some measure to raise Bohea Tea in Sweden, that the Company may have an opportunity to ship off some of their bad Bohea Tea instead of having it burnt as usual." And there was a rule to show cause why an Information should not go against the Defendant for printing and publishing a Libel against the Directors of the East-India Company.—My Lord, the arguments of the Counsel I intentionally omit: they are in substance pretty much what have been urged to-day on the part of the Defendant. Then, my Lord, the Chief Justice says—"It is not insisted that the matter of the Advertisement does not import what is libellous; it charges somebody with being concerned with the Swedish East-India Company, which is certainly a reflection upon the person who is said to have acted so. The rule is, for the Defendant to show cause why an Information should not be filed against him for a Libel upon the Directors of the East-India Company; and it is objected to, as not being a Libel against all of them: but the Advertisement seems equally applicable to every one of the Directors. Where a paper is printed equally reflecting upon a certain number of people, it reflects upon all; and readers, according to

their different opinions, may apply it so. It has been the rule of this Court, always to endeavour to prevent Libels upon societies of men. Where the persons reflected upon are quite unknown, the Court will not grant an Information. In the Jews case," which is referred to as having been decided in Trinity Term, 5. Geo. 2d. "it appeared by affidavit that the persons upon whom the reflection was made were moved"—there must be some mistake there, I do not know what it is,—“but the Court held, that for the printing such an account of the Jews, as would tend to make people believe them so barbarous as to burn a woman and her child because it was begot by a Christian, the Information ought to go. . Now as this is equally applicable to all the Directors, the readers may equally apply it to any one, which is the inconveniency this Court always endeavours to prevent. If a man says A. B. C. and twenty-more, naming them, are some of them guilty of publishing a Libel, I think an Information would lie for it ; and as this, upon the face of it, amounts to a Libel, I think the Court ought to grant an Information.” Mr. Justice Page expressed himself of the same opinion. Probyn, Justice—“When a man says a member of a Company, a Director, &c. has committed an offence, it is a reflection upon

the whole body; for it will be hardly understood, that one member alone could raise the price of Green Tea—and he afterwards names the Company. I think this deserves the animadversion of the Court. The Advertiser ought to know the author of this, and to produce him.”—Chapple, Justice—“ It is not necessary to give any opinion how the Information must be drawn, or whether it must be a Libel against all the Directors. It seems to be a reflection upon all the Directors, and the conclusion of it seems to throw a general reflection upon the Company. As it points out none in particular, it must reflect upon all, and create a distrust of them in the public; and therefore I think the rule ought to be made absolute; and it will be for the Jury’s consideration, whether this reflects upon all the Company.”—Lee, Chief Justice—“ The rule must be made absolute.” The Defendant being found guilty upon this Information, was adjudged, in Easter Term, 1741, to pay a fine of twenty marks.—Now, my Lord, here, in the case I have cited, the Libel only said “an East-India Director”—pointing out no one, and containing nothing to show its applicability to one rather than another.

Mr. Justice Abbot.—I have not the least doubt this Indictment might have charged it in such a form as to suit the case; because, if a

party publishes a Libel against one of a number, without naming him, it is for the Jury to say, whether it is not the object to excite suspicion against each of them. Here the Libel is predicated to be of and concerning the eight; and those words create the difficulty in my mind. If those words were out of the first count, I should not have felt any difficulty at all. But perhaps the best course is for the Jury to say, whether this Libel has the natural effect of causing suspicion to be excited, and of defaming all the eight, by reason of its ambiguity; and if the evidence is not sufficient to sustain such a verdict, you can move the Court.

Mr. Scarlett.—Mr. Marryat has cited this case I think, your Lordship will see, the moment you see the Libel.

Mr. Justice Abbott.—I have not the slightest doubt it will bear the interpretation.

Mr. Scarlett.—The case my learned Friend has cited, is a case in which the Libel clearly related to some act of the Body. I do not mean to say, that individuals may not be libelled in the mass, by selecting one, and describing the rest; but in that case no one Director could raise the price of Tea. One man was named, but it was an attack on the Company, Lord Chief Justice Lee says, if a Libeller were

to name twenty-four persons in a Libel, it would be a Libel upon all: and here, if the Aides-de-Camp had been all described, or named, and something stated that one had done, it would have been a Libel upon the whole; but here the words, “a person who held the situation of Aide-de-Camp to Sir James Leith,” are a *descriptio personæ*.

Mr. Justice Abbott.—He speaks of one only.

Mr. Scarlett.—If he had named them all as Aides-de-Camp, and said one did so and so, it would have been a Libel on the whole; or if it was said he did it in the character of Aide-de-Camp, it would have been a Libel on the whole: but here it is a mere *descriptio personæ*, and it might have been said with as much truth that it was a Libel on the whole population. It is no more to be inferred that he meant to attack the particular body of Aides-de-Camp, than the general proprietors of estates in the country; it is a mere *descriptio personæ*, and he is not charged with an act done *quia* Aide-de-Camp: but if it is to be supposed it meant only an individual, how can it be said he contemplated the Body at large, or had any intention against the Body at large? Therefore it seems to me, the real meaning is this,—that the person who wrote this, supposed a single individual, whom he meant to describe, had done

so and so, without reference to the other Aides-de-Camp, because it is not said to have been done in the character of an Aide-de-Camp : therefore the first count cannot be supported in any way.

Mr. Justice Abbott.—I have not the slightest particle of doubt that a count might be so framed as to make this a Libel against the eight; for if it were otherwise, a person might publish a Libel of one of eight persons, and, the facts being so false, no human being could apply it to any one of them, he must go unpunished, though he may have brought eight persons into slander and reproach. I will take the opinion of the Gentlemen of the Jury, though I give my own in point of Law. I will take their opinion whether this Publication has the effect of bringing several persons who fill the situation of Aide-de-Camp, into suspicion and disgrace? If they think it does, they will find him guilty on the first count; and you shall be at liberty to apply to the Court to correct that verdict, if the evidence does not support it.

Mr. Richardson.—Should not the opinion of the Jury be taken, my Lord, whether the paper is a Libel of and concerning the eight?

Mr. Justice Abbott.—I think it is not—I tell

you it is not—it is the introduction of those words that excites all the difficulty,

Mr. Scarlett.—I never was meaning to dispute what your Lordship says, that this might have been a Libel on the eight, if the party had intended to lead to the eight.

Mr. Justice Abbott.—That is the question on the Record: you shall have the benefit of that.

MR. JUSTICE ABBOTT'S CHARGE.

GENTLEMEN OF THE JURY,

This is an Indictment against John Hatchard, for the publication of a supposed Libel. Gentlemen, by the frame of the Indictment, two distinct characters are given to this Publication; one is, that it has a tendency, and is calculated to defame the several persons who fill the situation of Aide-de-Camp to Sir James Leith, who was the Governor-General of the Leeward Islands, at the period alluded to in the publication; the other is, that it has a tendency, and that it is published therefore with the intention of bringing the Criminal Justice of the Island of Antigua into disrepute, by representing that the Criminal Justice there was not duly administered on the behalf of slaves. These two characters, you see, Gentlemen, are perfectly distinct; and I shall by and by request the favour of your opinion on each of them.

The Indictment further charges this to be a Libel, in eight separate counts, on eight separate individuals named in those counts; but it has turned out on the evidence, to be impossi-

ble to apply it to any one of those eight—impossible, because the Libel does not designate any one of them further than by his situation of Aide-de-Camp—and impossible because the fact mentioned in the publication is wholly false and groundless: if there had been any colour for it; if there had been any rumour in Antigua or England, applying to a particular individual, it might perhaps be said the publication applied to that individual; but there is nothing of the kind. It appears to me, that the facts stated in the Libel, are proved, by Mr. Horsford, to be false and groundless.

Before I proceed to direct your attention to the particulars of the publication, and to the precise points that arise out of it; I would make one or two remarks upon some topics that have been introduced before you to-day, and which do not appear to me to have any relation at all to the matter you have to try. This publication, or your verdict, have nothing at all to do with any general question relating to the slave-trade or its abolition, or the manner in which persons in that unfortunate situation are or ought to be treated. No general question at all is involved in your finding; neither is it of any importance to you, whether the prosecution in question has been instituted under the direction of the Legislative Body of

the Island of Antigua, or not. It is quite immaterial to a Jury, who are to pass a verdict of guilty or not guilty, on a person, who or what his prosecutor may be. It has been said, that a great part of the object of this prosecution was not so much to punish Mr. Hatchard the publisher, as by the medium of a prosecution against him to compel a disclosure of the original author of this slander: with that you seem to me to have as little to do as with the other topics. There is no doubt that by the Law of this Country, and by the Law of all other civilized countries, a Printer or Bookseller is answerable criminally as well as civilly, for the contents of the books he publishes, no less than the author of them. If, indeed, the Law should be otherwise, reputation, the protection of which is one of the greatest objects of the Law, as great as the protection of property, and scarcely less than the protection of life itself, it would be wholly defective; for if they were not answerable, as the authors are generally unknown, slander might be circulated to any extent, and on any subject, without the possible means of prevention. It was not indeed pretended by the advocate for the Defendant, that Mr. Hatchard is not answerable for this publication, if in your opinion it should turn out to be criminal. As little have you

to do with the question, whether there has been a second edition, or what may be its contents. A person cannot relieve himself from the charge of a Libel by publishing a contradiction, even on the next day. That is matter for consideration at another time and place, but does not lead to an acquittal of the original charge.

Gentlemen, you all know very well, that the injury that is done to the reputation of a particular person by a publication of to-day, cannot be remedied by a retraction to-morrow. Many of those who see the original, may never live or be in the way to see the contradiction of it; and in the mean time if they see it, great mischief must be done, irreparable injury may be suffered. As little have you to do with the Body by whom this publication is sent into the world—I mean the African Institution: because, however high and honourable the individuals of it may be, however laudable and praise-worthy their general views may be; yet if in the prosecution of those views, laudable as they may be, they put forth to the world slanders upon an individual, or upon any body of individuals, or upon the administration of justice in any particular place, they are as much amenable to the Law for such an act, as the meanest subject of the country.

Gentlemen, having made these observations with a view of relieving your minds from the matters that have been pressed before you, and which do not appear to me properly to bear on the questions you have to decide; I will now proceed to state what the Libel is, and the two questions that appear to me to arise upon it. It is a passage contained in a book, purporting to be the Tenth Report of the Directors of the African Institution, read at the Annual General Meeting held on the 27th day of March, 1816. This Institution, Gentlemen, was established, I have no doubt, and has been prosecuted and carried on, for the most laudable purposes; and so far as they may make private communications to each other of what they shall hear from foreign parts, with a view to the conduct of their own designs, so far they will be acting lawfully: but if they depart from that, and put forward to the world at large, slanders on an individual, or on a body of individuals, they are not less amenable than they would be if they filled any other character. "The Directors are also informed, that about a year ago, the following circumstance took place in the Island of Antigua. A Gentleman, who held the situation of Aide-de-camp to the Governor, Sir James Leith, having severely cart-whipped a negro-woman of his own, who

was pregnant, she laid her complaint before the Governor, who humanely attended to her story, and dismissed her with some money for herself, and a note to her owner. Instead, however, of taking his Excellency's interference in good part, the Gentleman gave the unfortunate woman an additional number of lashes, and dispatched a note to Sir James Leith, who in consequence ordered his Secretary to inform the writer, that Sir James had no further occasion for his services. On the receipt of this information, the Gentleman dressed up one of his negro-boys in his own uniform, and mounting him upon an ass, dispatched him with an insolent note to the Governor." So far you see, Gentlemen, the matter relates to one of the Aides-de-camp of Sir James Leith. Now comes the other part. "He" (that is, the person who is asserted thus to have conducted himself) "was afterwards indicted for cruelty at the express order of the Governor, but the Grand Jury refused to find the Bill." Now this is put forth to the world as information given to the Directors of the African Institution. It is to be lamented, that before they, or any other body of men, publish information they may have received from channels of private correspondence, and which perhaps with great propriety they refuse to disclose—it is to be la-

mented, that before they put forth that information to the world, they do not take the pains to inquire whether the information be correct or not. Now here Sir James Leith is pointed at by name; and therefore if any application had been made to him, previous to the publication of this matter, it would, as we must infer from the testimony we have received this day here, have been answered in such a way as to satisfy them the information was false:—unfortunately they have placed too much reliance upon the person who gave it them, and sent it abroad to the world by the publication I hold in my hand.

Now, Gentlemen, the publication, in the first part, imputes great cruelty, and conduct in the highest degree improper, to an Aide-de-Camp, without naming him, of Sir James Leith. I need not repeat the evidence; it is, that there is no foundation for the story. The Witness called, was one of the Aides-de-Camp; and if what is stated had passed, he could not but have known it: he says, no one was dismissed: he filled the situation of Attorney-General of the Island; and in that Island, as in some other part of our dominions here at home, namely, Wales and Scotland, no criminal prosecution is carried on without the knowledge of the Attorney-General; so that if there had been any In-

dictment, he must have known it in his official character, for he was resident in the Island at the time. It appears by his evidence, that at the time to which this publication refers, there were eight several Gentlemen who filled the situation of Aides-de-Camp to Sir James Leith; the publication does not name any one of them; nor does it contain any matter by which any person acquainted with all of them, might apply it to one in preference to the others—it is in these general terms: “A Gentleman who held the situation of Aide-de-Camp to the Governor,” did so and so. Now there were several persons who held that situation; therefore you will be to say by your verdict, whether you are of opinion this publication, most manifestly false, and most manifestly reflecting upon some one of them, was calculated to bring all of them, by reason of the uncertainty, into public suspicion and disgrace. It is said, persons reading this publication, and knowing that such and such Gentlemen filled that situation, would be led to say it might be this, or it might be that; one person may fix on one as the object of the slander, another upon another, another upon a third, and so on through the whole number: that may be the case; and you will, if you please, Gentlemen, tell me whether you are of opinion that this publication, ambiguous

as it is, (a " Gentleman," without naming him) and utterly false as it is, and for these two reasons incapable of application to any one of them, is a Libel calculated to raise suspicion against all, and bring them into disgrace: if you are of opinion it has that effect, you will say the Defendant is guilty on the first count.

The other question, which refers to the latter part of the publication, applies to the last count of the Indictment; it is in these words:—" He was afterwards indicted for cruelty at the express order of the Governor, but the Grand Jury refused to find the Bill." That follows the allegation of particular facts before rehearsed; and that is said, in the last count of this Indictment, to have been published in order to cause it to be believed, " that Criminal Justice was not duly administered by the Grand Jurors there on behalf of slaves." If you think that this publication has that effect, and is naturally calculated by the insinuation to cause a belief that Criminal Justice was not duly administered by the Grand Jurors on behalf of slaves, you will be to say the Defendant is guilty upon the last count also: if you think it has not that effect, you will be to acquit him.

Now it is urged to you for the Defendant, that the clause—" that the Grand Jury refused to find the Bill," does not cast any imputation

on the Grand Jury; for they may refuse to find a Bill for the most laudable and proper purposes: when evidence is not laid before them to justify them in finding a Bill, or although persons may represent the facts to them, which, if true, ought to induce them to find a Bill, yet, from the character of the persons, or the mode in which they conduct themselves in their presence, they should repudiate their evidence. The expression is equivocal; it may mean a justifiable, laudable, and proper refusal—it may mean an unlawful and improper refusal:—and you are to judge upon the whole, whether it has one meaning or the other.

Now if this had followed a sentence charging, that some person intending to injure another had caused a Bill of Indictment to be preferred against another, and had sent some persons to induce the Jury to find a Bill; you would collect the imputation was not on the Grand Jury, but on the person who sent the Bill to them, and sent witnesses before them to make them believe that true which they found to be false. If this sentence had followed such a sentence as that, it would be an innocent publication; as it would be imputing to them, not an improper conduct, but a proper and laudable one. But what are the facts that pre-

cede this sentence? for on that you will judge; it is an assertion, that " a Gentleman, who held the situation of Aide-de-camp to the Governor, Sir James Leith, having severely cart-whipped a negro woman of his own, who was pregnant, she laid her complaint before the Governor, who attended to her story, and humanely interfered on her behalf—that the person, however, so far from yielding to the wishes of his master, repeated his cruelty and his improper conduct ;" and yet these things are asserted as facts :—and it is further asserted as a fact, that this person, who had so misconducted himself, was, by the express order of the Governor, prosecuted by an Indictment for cruelty, but that the Grand Jury refused to find a Bill.

Gentlemen, you will be to say whether, connecting this sentence with the sentences that have preceded it, with the facts therein mentioned to have been committed as facts, any man can doubt whether the author of the sentence did not mean to say, the Grand Jury had refused to find the Bill, although facts to warrant it had been laid before them at the instance of the Governor. If you are of that opinion, then it is a Libel within the last count of this Indictment, calculated to represent, that Criminal Justice was not duly administered by the Grand Jury on behalf of slaves.

I have been invited to give my opinion on the contents of this paper ; and it is probably my duty to do so—but you are not to be governed by my opinion, or give any greater weight to it than in the exercise of your own judgment and reason you think belongs to it ; for the character of the paper is to be found by your opinion, and not mine.—I am of opinion, that this publication, ambiguously as it is expressed as to the individual, and false as it is in all its parts, has a tendency to bring all the persons who fill the character of Aides-de-camp of Sir James Leith into suspicion and disgrace, and is therefore a Libel in the first view in which I put it. I am also of opinion, that, taking the whole together, the expression at the close—“ the Grand Jury refused to find the Bill”—does mean to impute an improper refusal. That is my opinion upon the two questions : but I request you to exercise your judgment, and find a verdict upon the result of that judgment.

The Jury immediately found the Defendant guilty upon the first and last Counts.

PROCEEDINGS.

THE KING
versus
JOHN HATCHARD.

} Copy from Mr. Gurney's Short-hand
Notes of the Proceedings in the
Court of King's Bench, 10th May,
1817.

Mr. Serjeant Best.—I move your Lordship for Judgment, in the King against Hatchard. It was tried before Mr. Justice Abbott.

Mr. Justice Abbott read his Report of the Evidence on the Trial, and added,

An objection was taken, that as the pamphlet spoke of one individual only, there could be no verdict upon either of the Counts charging as a Libel upon all of them or one of them that which appeared to be a Libel upon one individual. I however left it to the Jury, and gave the Defendant liberty, to move to enter a verdict of "not guilty" upon the first Count, if the Court were of opinion, that the verdict concerning the eight did not affect them generally; and I left it to the Jury to determine, whether they thought the Libel calculated to bring the whole eight into suspicion and disgrace.—That, there being no clue to fix it on one, they would consider, whether it was not calculated to bring all of them into suspicion

and disgrace; and that if so, they would find the Defendant guilty upon the first Count.

I left it also to the Jury to consider, whether the Charge, that the Grand Jury *refused* to find the Bill, meant that they refused in consequence of the want of due evidence to enable them to find it, or whether it was to be collected, that though proper evidence had been laid before them, they had refused to find it; and to find their verdict according as they should consider this word used in the one sense or the other; and they found the Defendant guilty upon the first Count and the eighth.

The following Affidavits were read on behalf the Defendant:

Of the Defendant, (sworn 1st May).

Of the Defendant, (sworn 5th May).

Of the Defendant, (sworn 8th May).

Of William Henry Whitehead.

Of the Earl of Daruley.

Of the Right Hon. Lord Grantham.

Of the Right Hon. Fred. John Robinson.

Of the Honourable Philip Pusey.

Of Sir Thomas Bernard, Bart.

Of Sir Robert Peel, Bart.

Of John Weyland, Esq.

Of Charles Cowper, Esq.

Of John Penu, Esq.

Of Buckeridge Ball Ackworth, Esq.

Mr. Dealtry.—Are there any Affidavits for the Prosecution ?

Mr. Serjeant Best.—No.

Mr. Scarlett.—Rising to address your Lordship on behalf of the Defendant now on the floor, I cannot but express my regret, that he should in this moment of peril be deprived of the benefit of those eminent talents to which his defence was originally entrusted. I feel the more concerned on this account, that I am the cause, and perhaps the innocent cause, of having giving him that advice which exposed him to the expense, and one of your Lordships to the trouble, of investigating this Case before a Jury. From the very first till the present moment, this Gentleman has entertained but one sense of regret and concern, that he should have been the unfortunate instrument of ushering this publication into the world : but yet, my Lord, I must own, that at one time I did entertain a considerable hope that upon a candid consideration of the whole context of that publication,—of the manifest innocence, nay, I will say of the laudable motives which actuated the parties in the main design of that publication, a Jury might have been persuaded to think, that there was not any thing in it of so dangerous a tendency, or so injurious to the reputation and fame of

individuals, as to have made it necessary to make him a public example. In that, it appears that I was deceived: but I am sure you will do me the credit to believe I entertained that honest opinion, or I should not have given that advice.

My Lord, I felt, as every one must feel, that the insinuation conveyed in that report, as far as it respected the Gentlemen who are there generally described, must have been painful to the feelings of their honourable minds: but I did venture to think, that it was not an impossible case, that where, by an inadvertent publication formed altogether with a different view, an expression had dropped that was unguarded, and therefore had given pain to individuals, though a public prosecution for a Libel must necessarily be the consequence, I did think that the Aides-de-Camp of Sir James Leith, being from their situation Gentlemen—and, as was represented by one of them in this case, Gentlemen of character, which I never doubted, that when they had considered this publication, which could not be meant to attack them as a body, they would have felt that the reparation due to them was such as Gentlemen might derive from a retraction of this slander.

My Lord, it appears, that long before this prosecution was meditated, or long before any

public notice could exist of it, the Directors of the African Institution themselves had issued a resolution, taking notice, that what had crept into their Report was untrue. They had issued a resolution in the only terms they could issue, unless they libelled the person who had given them information ; in which they stated, that the person who sent them that information had been misinformed. It appears also, that measures were taken to prevent the sale of the publication. That the Defendant, of his own authority, and those who employed him, the moment they were satisfied—as they were—of the want of foundation of that which they had stated, withdrew the publication, and took every measure to prevent its further circulation ; and sent a fresh copy of that in question to the press without this matter ; and that but six copies of this paper found their way into the hands of the public—probably the greater part into the hands of those who instituted this prosecution. I submit, therefore, my Lords, that every thing was done that this individual could do.

Upon the trial of this Cause, his Lordship had the goodness to suggest his doubts upon the form of the first Counts of the Indictment, and to give us the privilege to move the Court, if we thought

it advisable. My Lords, upon consideration, when we reflected that, however doubtful the issue of the first Count might be, the Jury had found the last Count, charging a reflection upon the Grand Jury of the Island of Antigua, however slight the ground,—I thought it vain to trouble your Lordship with an application upon the first Count, when there was a conviction which could not be disturbed upon the last. But when I look at the publication itself, I see that the word “ refused ” is the only word upon which a ground could exist for calling for a verdict ; which I admit is a fair ground. One single word (which, perhaps, in the moment of writing, the writer in composing the paragraph, had not adverted to the force of) is the only ground of charge. But I am far, my Lords, from vindicating the publication. I should neither do justice to the feelings of the individual I represent to day, nor, though I am not Counsel for the African Institution, should I do justice to them, if I attempted on any one part of this publication to vindicate that which they had published. I do not say one word in justification of it ; and all one can say in excuse for it is, that persons with the best intentions and the best motives may be deceived by bad information.

My Lords, this is a Case in which the Publisher is before your Lordship; and I know very well, and I shall never deny, that generally speaking, the Publisher of a Libel must be identified with the Author, unless the Author is avowed. But, my Lords, in this Case I appeal to your Lordships' feelings. The Jury have done right by their verdict—that I admit.—But can your Lordships, with your knowledge of the world, suppose a Case which can possibly exist, in which a Publisher might more easily be led into this false step? No unknown author comes to him, desiring him to publish this paper—no person, who could be suspected of having an improper view; but the Publication coming from a most honourable Body, comprising what is most eminent in rank and in talents in this Country. How could he imagine that he incurred any risk in publishing what came from them? They must be deemed the Authors of this publication; and it does not go from them as unknown authors. It is a publication, the Authors of which are known; and therefore he himself might surely be excused, if he did not exercise the caution which the Law expects, of the inspection of the Publication itself, to judge for himself, whether it contained libellous matter. My Lord, it is possible that the Attorney-General himself

might send a publication to the press, in which something might appear that might be libellous. But surely a Bookseller might be excused, if he knew it was revised by that learned person, for putting it forth into the world. I trust, therefore, Mr. Hatchard will stand as much excused before your Lordships, as any man who has committed an involuntary offence.

What then, my Lords, is the object of the prosecution? Is it to prevent a repetition of the offence? I trust I have satisfied your Lordships, that Mr. Hatchard is not that individual, who would knowingly engage in a libellous publication. Is it to do justice to the feelings of the individuals pointed out by this Publication? Surely justice has been done to them. No man has ventured to affirm the truth of this publication—no man concerned in it has done any thing but express his concern. An opportunity was given to the Prosecutors at the Trial to prove the falsehood of it. Perhaps one might have doubted, as the truth was no justification, whether it was false; but it was the object of every one who was connected with Mr. Hatchard, to make the refutation of the calumny as public and as distinct as the Libel itself had been: and I will venture to say more pains were taken; for in the whole circuit

of this Kingdom, only six copies had been put into circulation; and I think your Lordships must be satisfied, that the publications in the Newspapers have given more currency to the Libel as well as to the refutation of it, than the original book itself. If, my Lords, the object of this prosecution is to sooth the wounded feelings of those who have been affected by it, —either the Grand Jury, respectable men, no doubt, or the Aides-de-Camp of Sir James Leith, —I trust your Lordship will think, that every thing the Defendant has done, has been with a view to effect that object; and that my learned Friend who represents the Prosecutors, if they be the Prosecutors, will not, in the exercise of that humanity known to belong to him, press for a vindictive punishment on the part of Gentlemen, who must have received all the reparation that a Gentleman desires to receive.

My Lords, there is perhaps one other view I ought to take of this, by way of anticipation. On the trial, my learned Friend, Mr. Serjeant Best, who represented the Prosecutors, was pleased to introduce, and with no common degree of force, an address to the Jury, that I thought, and in which I had his Lordship's concurrence, had no necessary or immediate connexion with the subject. He was pleased

to say, that it was not the Aides-de-Camp of Sir James Leith—that it was not the Grand Jury of Antigua, but the Legislature of that Island, that were the Prosecutors. The Legislature of the Island of Antigua—my Lords, if the Legislature be the Prosecutors, if they have thought it worthy of them to institute this prosecution, for the vindication of the Grand Jury, or the Aides-de-Camp of Sir James Leith, I trust they are satisfied with the public satisfaction those persons have received. But if, under the mask of this prosecution, it is intended to take the occasion of making some declamation against the object or supposed motives, either of the body, or the individuals forming a part of the body, of the African Institution, I beg leave to enter my protest against Mr. Hatchard being the scape-goat for that Institution. It was said by my learned Friend—and he could not say otherwise—that the rank, the honour, the talents, and the virtues that adorned that Institution, made it impossible to suspect that they, as a body, could entertain improper views: but he was pleased to say there might be individuals among them, who set themselves up as a tribunal to judge of the conduct of masters to slaves in the West Indies, and who were desirous of introducing into the public mind prejudices, which my

learned Friend painted in his peculiar manner, as highly injurious to persons residing in the West Indies. My Lord, if I may judge from what I know of some persons—if I may judge from the well-known character and motives of those I do know, I am satisfied that my learned Friend, and those who instruct him, are mistaken in that supposition. I believe that no such individual exists, and that it is totally an unfounded supposition. But, my Lords, if they do exist, I trust your Lordship will think, that this is not an occasion in which any declamation can be urged against them to affect the Defendant upon the floor. My Lords, the conviction and the punishment of Mr. Hatchard can have no effect upon those individuals, if any such exist; and therefore I trust my learned Friend, in his discretion, will not think it expedient to take this occasion of entertaining your Lordships with a topic which has nothing to do with the matter before the Court.

With respect to another part of this case, I shall trouble your Lordships very shortly. It is stated in the affidavits, that the Defendant is wholly ignorant of the name of the individual who wrote that paper; that he has endeavoured to obtain the name, but has not been able to procure it. My Lords, I am Counsel for Mr. Hatchard in this case; and I trust it is suffi-

ent, if your Lordships are satisfied that he has been unable to do so, that no aggravated punishment should fall upon him because he has been unable to do it: but I appeal to my learned Friend's judgment and candour, whether it be necessary for him to possess, on behalf of the Legislature of the Island of Antigua, the name of that individual. A gentleman living in the West Indies, who has been probably craftily imposed upon, in order to make him the vehicle of a piece of false information, writes a private letter to a friend connected with the African Institution, and that gentleman lays it before the Committee. My Lords, if the Prosecutors are indeed the Legislature of the Island of Antigua, I cannot but say that I think those in possession of that name, have done right to withhold it. My Lords, he has committed no crime cognizable to the Laws of this Country.—A gentleman living in the West Indies, who has written a private letter to a friend, cannot be indicted here if his friend here has published it: by what Law of Antigua can he be brought before a public tribunal? I apprehend by none:—if there be no law in this country, or in that, by which he could be punished, I trust, it will not be deemed on the part of Mr. Harrison,—a gentleman whom I have long personally known, a gentleman of the

profession,—altogether improper that he should be unwilling to disclose a name to the offended Legislature. My Lords, an angry Legislature is a formidable enemy ; and so far there might be danger, lest, if they found no law to punish that person, they should make a law. I do not say that will be done ; but still it may be a reason why an individual, himself innocent of any crime, and himself merely the vehicle of retailing false information imposed upon him, should not be surrendered up to persons who may have their own peculiar views and feelings upon the subject : but whether that be so or not, Mr. Hatchard is ignorant of the name of that individual, and is unable to comply with that desire. My Lord, I make little doubt that if the individual who conveyed the information, had been suspected of any improper design in so doing, and much more if he had been guilty of any crime in so doing, he would have been surrendered to the vengeance of a prosecution ; but on the view I take of the case, it does not appear to me in what way they could proceed criminally against him, unless they made a law for the purpose.

My Lords, there is another circumstance to explain the affidavits. It appears that Mr. Hatchard has sworn, and that recently, that he applied to know who was the individual author

composing the Tenth Report. The answer is, that no information can be given to him upon the subject. My Lord, the author of the publication must be deemed to be the body at large—the publication was directed by the body at large; and whether any individual compiled this, which undoubtedly had been better suppressed, or it was done by the committee, the body at large must be considered to be the authors of the publication. But what does my learned Friend wish?—A vindication of the character of these gentlemen?—he has it. Does he wish contrition in the Defendant?—he has it. What does my learned Friend wish?—that he should have a victim eminent for rank, talents, or virtue, brought into this Court? I trust such is not the desire of my learned Friends, and that such is not the design of this prosecution; if it was, I can only say, that your Lordship's candour and sense of justice will not make Mr. Hatchard a victim upon this occasion to any such desire, if he is not able to disclose that which he has been asked to disclose: nor do I see how, if it were disclosed, any material object of any prosecution could be more effectually answered, than has been answered by this prosecution, in having brought forth a public refutation of that which was false. I have only to draw your Lordship's attention to the charac-

ter given of Mr. Hatchard, by persons unconnected with this Institution, who have expressed their strong opinion of his moral character—of the caution and forbearance, and honour, with which he has conducted a trade of some difficulty in these times, for nineteen years ; and that this is the very first occasion in which, under the sanction of very illustrious names, who might have protected him, at least, from the suspicion of designing to do any thing wrong, he has been inadvertently led into the sale of six copies only, of a publication containing a passage injurious to some individuals ; and for which, from the time he has been conscious of his offence, down to the present moment, he has never failed to express the contrition which appears upon his affidavits upon this occasion. I rely upon your Lordship's humanity and justice, that if there be any case in which the publisher of a Libel can receive a mitigated sentence, this is, above all others, that case.

Mr. Richardson.—My Lord, I am also of Counsel for Mr. Hatchard. After what has been said by my learned Friend, I think I shall best consult his interest, by confining what I have to say to one or two topics. I hope that upon the affidavits, read by the officer, it will appear, that his conduct, ever since it was

made known to him, that the publication in question was supposed to contain reflections injurious to the character of any individual; has been perfectly consistent with the high character which the numerous and respectable testimonies have borne to-day. It does not appear that at any time he has ever endeavoured to uphold the charge supposed to be made against those persons. Although he appeared here to make a defence before the Jury, I may appeal to the learned Judge before whom this trial took place, that it was not with a view to sustain the charge against them, but under the impression, that the supposed Libel, when coolly and impartially considered, might not be considered to fall within the legal definition and scope of a Libel; that there might be favourable circumstances to induce a Jury to consider that there was a want of that malice, which might be supposed to form a part in the verdict of guilty: and although I do most fully admit that, by the verdict the Jury have found, they have proved the advisers of Mr. Hatchard were mistaken; I hope that will not be considered as putting him in a situation different from that in which he would have stood if he had at once submitted to a judgment by default.

My Lord, it appears that he has taken every

pains to satisfy the object of the Prosecutors; if such was their object, of knowing who was the author, or even who was the person drawing up from the letter the paragraph in the publication: both these facts appear to me out of the Defendant's reach. It appears that he had nothing to do with the printing—that he was merely the agent in receiving a definite number of copies; not from any unknown, or suspected person, but from the messenger of this body of most respectable persons,—to whom he paid implicit credit, and upon whose authority he published a small number of copies: only to the number of twenty-five were ever received by him for sale; and of those, only ten, or a dozen at the outside, ever found their way through his agency to the world, and they perhaps, some of them, to the agents for this prosecution. He has used every endeavour, by application as well to the Secretary of that respectable body, as to the Printer of the book, to be furnished with the means of informing the Prosecutors with the name of the author, I do not mean to say, that in point of Law he is by that rendered not guilty; but he has rendered every reparation in his power.

My Lords, I will not say more, lest I should weaken the effect of my learned Friend's address; and I hope that the Defendant, whom I have per-

sonally known some years, will not suppose that I desert his cause by the omission of other topics : if I did not stand here as his Counsel, I should have been happy to have borne my individual testimony, not only to the integrity and respectability of Mr. Hatchard's character, but also to the peculiarly humane and charitable disposition of his mind.

Mr. Serjeant Best.—My Lord—It has seldom fallen to my lot to address your Lordship calling for punishment upon any individual ; and the duty I am called upon—and feel myself particularly called upon—to discharge to-day, not merely from what has passed before, but what has taken place to-day, is one which I perform with extreme pain, because I have heard, from the most respectable testimony, that the Gentleman who stands upon your Lordship's floor, is a most respectable man.—I have not known him, as my learned friend Mr. Richardson has ; but from all the information I have had, I would add (if it did not seem impertinent almost to add) my testimony to the integrity and propriety of the conduct of the Defendant. My Lord, I will do more than that, I am willing at this moment, if those who send my learned Friend here think proper to accede to my proposition, I will do more than give my testimony to the good character of the De-

fendant—I am willing, upon one condition, which I am sure your Lordship will think a proper one, to stop here and to ask no judgment against him:—my Lords, the condition is this—we cannot prosecute the African Institution—Let them give up to us the Individuals of that Society who directed this publication. I know, my Lord, that there are some of them attending the Court. One cannot look at the names that are included here, without seeing that there is every thing that is great and honourable in society. I know that these persons have nothing to do with these proceedings; and I trust, that there are none associated with the individuals whose names I hold in my hand, that would stand by and suffer an individual to be punished for their fault. If they are worthy of being members of this Society, I trust they will accede at once to my proposition. If they are not prepared to do it now, I am ready to consent to this matter standing over, that they may have an opportunity of judging, whether they will allow an innocent man to suffer for their crime; for that somebody must be made a sacrifice, there cannot be a doubt.

My Lords, my learned Friend has thought proper to advert to what passed at the trial—my learned Friend has thought it good to state, that I pressed upon the Jury topics which the

learned Judge objected to:—my Lord, I had not the good fortune to be present when the learned Judge summed up; I cannot therefore know whether my learned Friend is correct in that observation or not; I however urged nothing upon that occasion which I did not think it my duty to urge, and which I shall to-day again shortly advert to, that I may know whether I have fallen into the error which my learned Friend supposes me to have fallen into. My Lord, there is however one thing my learned Friend has stated,—that this prosecution is to be made a mask for some purpose or other. I must beg to answer, that if it is, I am not conscious of it:—if I had conceived that could have been possible by those who have sent me here, neither they nor any other person should have prevailed upon me to come here. My Lord, with respect to the topics I introduced at the trial, and which I shall, if my proposition is not acceded to, feel compelled to touch upon again, they were only those, in my opinion, which grow immediately out of any Libel, which I must have failed in my duty to the Prosecutor and the Public, if I had not pressed upon the Jury; and which, so far from being found fault with by his Lordship, were reiterated by him, and sanctioned in his address to the Jury. My Lords, I will state to your

Lordships what I said to the Jury—I will correct my learned Friend—now I recollect what the learned Judge did stop me in—I am sure the learned Judge will do me the justice to say, that the moment he intimated his opinion, I stopped.—

Mr. Justice Abbott.—I rather think I told the Jury there was irrelevant matter—that it was not material to them by what body of persons the prosecution was agitated, or by whom the Publication had been sent forth into the world.

Mr. Serjeant Best.—That is just what I was about to state. Your Lordship, on my stating that it was a prosecution by the Legislature of the Island of Antigua, did state that we had nothing to do with who had instituted the prosecution; and I am sure your Lordship will do me the justice to recollect, that I immediately refrained from further observations, submitting, as I always do, to observations from your Lordship, or any person in your Lordship's situation. I did state to the Jury, and shall state now again, that this is a Libel for which somebody must be punished; and if these persons will sit in their room, and direct the publication of libels, and then will not come forward and avow themselves as the Publishers, the the Printer must be punished. It is a Libel

of that nature, that, if punishment is not pronounced, not only these Gentlemen will suffer in their character, (for these are not the individuals feeling it particularly,) but there is no White Man in the West-India Islands who is safe in his character or life.

My Lord, I have heard it said, that there were only six copies of this sent forth. I am very much surprised at learning that. I take for granted it is true in fact; but it is not substantially true. There may have been six copies only circulated; but will any man make an affidavit, that there were not six thousand copies of this printed? If so, it is very strange how one found its way to me, who am no Subscriber to this Institution.

Now, my Lords, let us see what is the Libel, and what has been the conduct of these parties since. The Libel is one of the most wicked that can possibly be published. It is said that it proceeded from mistake.—My Lord, the thing is impossible: it cannot have proceeded from mistake. It is said to have been published in consequence of some letter, written by some Gentleman, living somewhere, to some friend of the African Institution; and that that friend incautiously gave this letter to the African Institution, upon which they published this paragraph.

Mr. Justice Abbott.—The Secretary, I think.

Mr. Serjeant Best.—My Lords, it is very singular, that if this be so, they have never set out the letter—they might have given us the letter, without the name; and let us see whether they were warranted in publishing this, in the absence of that letter, which we have never been trusted with. I have a right to say, that some person or other has thought proper to publish this without any letter to bear him out. If they had any such letter, the best justification would have been the production of that letter to some confidential person. No attempt has ever been made to show to any one person the letter from which this passage has been published; and therefore I submit to your Lordship, I have a right to say, that they had no letter which warranted them in publishing any such paper; and that some one or other—God knows who, we do not—but that somebody or other has thought proper, for the worst of purposes, to fabricate this paper.

I will, now with your Lordship's leave, read this Libel; and I will ask, whether it is possible this Libel can pass unpunished. My learned Friend has truly said, if the Author cannot be got at, the Publisher is the only person you can proceed against; and that is peculiarly applicable to a case of this sort. You cannot

prosecute a whole Society, but there would be no difficulty whatever in the individuals who attended the Board, when this was sent to the Public, giving up their names ; and then I drop all prosecution—nay, after your Lordship's Judgment, I shall be ready ; for I am sure these Gentlemen, if they are Christians, cannot sleep in their beds without giving up their names. The Prosecutors of this Individual will be ready to come forward to make application in any quarter to relieve this Gentleman from the consequences of this Judgment, when we shall have a proper victim for this attack, made upon the White Population of the West Indies. My Lords, the paragraph is this : “ The Directors are also informed, that about a year ago, the following circumstance took place in the Island of Antigua : A Gentleman, who held the situation of Aide-de-Camp to the Governor Sir James Leith, having severely whipped a negro-woman of his own, who was pregnant, she laid her complaint before the Governor, who humanely attended to her story, and dismissed her with some money for herself, and a note to her owner. Instead, however, of taking his Excellency's interference in good part, the Gentleman gave the unfortunate woman an additional number of lashes, and dispatched a note to Sir James Leith, who, in

consequence ordered his Secretary to inform the writer that Sir James Leith had no further occasion for his services. On the receipt of this information, the Gentleman dressed up one of his negro-boys in his own uniform, and, mounting him upon an ass, dispatched him with an insolent note to the Governor. He was afterwards indicted for cruelty at the express order of the Governor, but the Grand Jury refused to find the Bill." Now, my Lord, this is not any one single fact which might have been picked up by mistake, and so found its way into this publication. But, my Lord, here is a series of charges. It is in the first place said, that a man in the situation of Aide-de-Camp to the Governor of this Island, was such a monster as to cart-whip a negro-woman in the situation in which this woman is described as being—that is one fact. There is a complaint to the Governor—the Governor remonstrates with the person—the person, on being remonstrated with, is guilty of the indecency of dressing up his negro-boy in that uniform he wore when in attendance upon the Governor himself, and of sending him mounted in a very ridiculous manner to the Governor; upon which he is discharged—that is a third fact. Upon this the Governor directs a prosecution—that is a fourth fact; and on all these circumstances being brought under the consideration of a

Grand Jury of the Island of Antigua,—that Grand Jury are corrupt enough not to find a Bill. Now, can this be the work of any but the most diabolical invention? It is said it came from the West Indies. I am glad to hear that.—Then if it came from the West Indies, it must be known to be false. There is not a man in the Island of Antigua, but knows every scintilla to be false. My Lords, not only the military authority of the Government is attacked—not only the Governor and the Aides-de-Camp are represented as cruel, but the civil authority in all cases regarding slaves is corrupt to the very bottom.—This is not insinuated, but it is directly charged. My learned Friend has said there is only this one word “refused” upon which the Jury have found the Indictment; and they could come to no other conclusion, than that this was a charge upon the Grand Jury,—That they had corruptly thrown out the Bill. My learned Friend says, that it stands upon the word “refused.” How can my learned Friend allow his zeal to his client to pervert his excellent understanding? It stands upon the whole of the paragraph. Is there any man who can read this without seeing, that the African Institution meant to insinuate, that the Governor’s Aide-de-Camp meant to conduct himself improperly; and

that the Grand Jury, in violation of their oaths—in violation of the first principles of humanity, thought proper corruptly to refuse bringing that person to punishment? My Lord, if this is the true interpretation, (and it is not merely mine—it is the interpretation which I gave at the trial) it has been sanctioned by a Jury who were called upon here to decide upon the guilt or innocence of the party. Can any man state a worse Libel than this? How bad would it be if it reflected on any Grand Jury in this Country?—much worse is it reflecting on a Grand Jury in the West-India Islands—much worse is it telling the whole of the Black Population in the West Indies—You are in that situation you can expect no protection from any person in authority.

My Lords, it is then supposed these Gentlemen have done something since to do away the effect of all this. My Lord, I stated at the trial—and there it was that your Lordship said, that till evidence was given of it, it was improper to say any thing about that which was not in evidence—I stated at the trial, and state now,—that in my opinion their conduct since the publication has aggravated the Libel. My learned Friend says—were they, without having the thing explained, to libel this innocent Gentleman in the West Indies?—My Lord, it is

impossible this Gentleman in the West Indies can be innocent—he must know he was circulating the most infamous falsehoods—he is out of the reach of all Libels for his infamy. My Lord, the Publication sent into the world was, in my opinion, instead of giving us any satisfaction, directly calculated to keep alive the idea that there was some foundation for the charge. If they had said, shortly, that they were very sorry they had published it, and had left it there, it would have been something; but the tendency of it is clearly to prove, that they thought there was something in it. It is thus—“ Resolved, that it appears from the said letters of the Honourable Thomas Norbury Kirby, and Sir James Leith, (of the authenticity of which the Directors see no reason to doubt) that the statement referred to, although communicated by a Gentleman on whose accuracy they reasonably relied”—so that the people may still think there is a great deal of foundation for it—“ has been contradicted from the highest authority. That the Directors have, in this instance, strong grounds for believing that their informant was persuaded of the truth of the facts which he reported; because they have had experience of his veracity and exactness in former and subsequent cases, and because it is impossible to impute to him any motive for

the inventing such a story, or propagating it, knowing it to be false ;—he had nothing to gain by deceiving the Institution, but had to lose by it the good opinion which, by its benevolent efforts to promote its objects, he had previously acquired, and the public”—My Lords, if the objects of this Society are to be promoted by such a man as this, however benevolent the motives of this Society be, the sooner it is annihilated the better. “ Resolved, that the Secretary do write to the said correspondent by the first conveyance, in the name of the Board, inclosing a copy of these Resolutions, and requesting that he will immediately transmit the necessary explanations on the subject.”

Why, my Lord, can there be a paper sent into the world better calculated to keep alive the idea still in the public mind, that if this is not wholly true, there is still a great deal of foundation for it? Can this, which is called an apology, be considered as an apology?—I consider it as bad almost as the original publication.

My Lord, this is all the satisfaction we have had from these Gentlemen. It appears that the Defendant has pressed them at different times to give up the author, or the writer of the letter ; with none of which they have complied : but there is one point on which I should like a

little satisfaction, and I think your Lordship will. I should like to know, whether this Society does not now defend this Gentleman ; and if the Society do, what is it but the Society coming here and saying, We cannot deny that some person has published this Libel—but it is not Mr. Hatchard. If it is not Mr. Hatchard, who is it?—Ourselves—but ourselves we will keep shut up in our committee-room. I consider Mr. Scarlett as Counsel for the Institution.—

Mr. Scarlett.—You do perfectly wrong in that, I assure you.

Mr. Serjeant Best.—I will put it generally ; somebody will say, We will desire the Court of King's Bench not to punish Mr. Hatchard, because he is not to be punished. I beg to state—your Lordships will correct my error, if an error it be—if the Author cannot be got at, the Publisher must be considered as the author ; and, however much your Lordships may feel, —and I feel as much as any man can, for the situation of Mr. Hatchard,—your Lordships must punish Mr. Hatchard, as you would punish those Members of the African Institution who are the real offenders, if they were before you ; for if that is not done, but a precedent is set for this Society, and all other Societies, to receive information, true or false, from all quar-

ters of the world, and under the sanction of their name to get Printers to circulate it, and after they have done the greatest mischief to individuals, and to the State, to say—Oh! you must not punish the Printer, this is an exception to the rule, for the Printer has acted under high authority;—such a principle would be attended with consequences most injurious to society. My learned Friend has put the case most strongly, as he always does—Suppose a Libel came from the Attorney-General—I say, if a Libel came from the Attorney-General, we should in that case, as in this, request the Printer to give us up the author; and if he gave up the Attorney-General, we should have done with him. I am not desirous to punish this Gentleman—I am more merciful than these Gentlemen—theirs is the pretence of mercy, with real cruelty permitting him to stand in the situation he does—mine is real mercy. I say, come forward and avow yourselves the criminals, as in character you ought to do; but if you do not, though desirous this Gentleman should not suffer, it is the only way in which I can punish you, by making you feel, when you retire at night, that there is a person suffering for that into which you have led him.

I am sorry to have been called upon to address your Lordships at so much length, dis-

claiming all hostility to this Gentleman, not only on my part, but that of my clients: I leave him in your Lordship's hands; leaving it to your Lordships to consider whether, with the pretences that have been set forth, it is safe to the public, particularly to that part of the community who, separated from their own country, in a particular manner call upon your Lordships for your protection, and particularly in these times, whether it will be safe for that part of the community, that a Libel on the Administration of Justice, in the persons of the Grand Jurors—a Libel upon the highest Military Authority of the Country—should pass unpunished, because the real Authors of the Libel do not choose to come forward; whether your Lordships can possibly consider this case as at all distinguishable from the common and ordinary case, where your Lordships have before had the Printer and Publisher, and cannot get at the Author. With these observations I leave the case in your Lordship's hands, and shall be perfectly satisfied with your Lordship's Judgment, whether light or severe, after I have done what I thought it my duty to do.

Mr. Marryat.—I shall trouble your Lordships with a few observations as to the conduct of the Defendant, and correct some of the dates as I get them from the affidavits with the

case. It has been stated, that he felt great compunction ever since he found he had been the vehicle to this publication, and that he has taken great pains to ascertain who was the original author of the letter, or who were the original publishers or fabricators of this report. My Lords, we will compare, with your Lordships permission, the dates he has given :—He published this book ; though certainly, according to his own affidavits, (which I take for granted is not untrue) he circulated only a small number of them from the month of April down to the 12th of November ; upon the 12th of November he stopped the publication of it, until a new impression had been made, and then circulated it, without the exceptionable paragraph. My Lord, was Mr. Hatchard ignorant of the refutation of this slander, by the Aide-de-camp's letter to Sir James Leith, and by Sir James Leith's answer, which had been printed early in October—was he ignorant of the resolution which is now relied upon on the other side, on the 12th of October—was he ignorant of the further resolution, by which they almost disavowed the truth of it upon the 29th of October?—That is not denied ; and yet down to the 12th of November, this Gentleman continues the publication of the Pamphlet—the very Pamphlet

put in evidence, and proved before your Lordships, was proved to have been published subsequent to the 24th of October.

Mr. Justice Bayley.—There is one paragraph in the Defendant's affidavit, which you ought to know. I had attended to that—he says: “ he did not, before Messrs. Martineau and Malton called upon him, as aforesaid,” that is, the 12th of November, “ entertain the most distant, or any knowledge, apprehension, suspicion, or conception of its containing any Libel, or any matter of a libellous, malicious, scandalous, or defamatory nature, or any matter whatever which was not founded in perfect truth.” And therefore the impression upon my mind—which you may consider—is this, that it may be that, although these resolutions had passed on the 12th and 29th of October, they had not reached his knowledge.

Mr. Marryat.—It is possible, and just possible, that they had not: but I think it a little singular, when the affidavits put in by him contain those resolutions, and state them to be published in the Courier, the Morning Chronicle, and the Times, that this Gentleman's attention was not called to that which was supposed to be an ample retraction and apology in the face of all mankind; because all mankind must be cognizant of their contents.

There is another observation upon the dates, which strikes me very forcibly.—When Mr. Hatchard is first threatened with a prosecution, he is desired to furnish the Author, both of the Report and the Letter.—When does he begin to make any inquiry upon the subject? He is satisfied, in the first place, with referring to Mr. Harrison—which is in other words saying, You may take your own means to find out the Author. He takes no steps for this purpose, according to his own affidavit, till the commencement of the present Term; and the first application he makes for that purpose, is stated to be the 23d or 24th day of April, the day after the commencement of the present Term.

Mr. Scarlett.—Will your Lordship excuse my reminding my learned Friend, that there is no affidavit before the Court to show, that there was any application made to the Defendant for any Author, but the Author of the Letter, till a very late period; and that the probability is, that the application to him was made at the time he made his application.

Mr. Marryat.—I think it is in evidence upon the Trial, that an application was made to him to give up the Author. At all events, upon the Trial we offered to give up all proceedings, if he gave up the Author. But he inquires about neither till the 24th day of April. Then he

goes on with that inquiry according to his own statement from the Printer, for the purpose of seeing whether he can get any information upon that subject, subsequent to his filing his former Affidavit, which is subsequent to the 1st of May. Then he follows up that inquiry upon the 5th day of the present month, I think, for the purpose of obtaining that information from Mr. Harrison; when he knew, from Mr. Harrison's former letter, the information would not be given him; and when he knew, therefore, it was a mere formal inquiry between himself the Publisher, and the primary delinquents in this case. It has been asked, whether the African Institution defend this Gentleman? I know no further, than that he appears by the very same Gentleman who is described in the introductory part, naming the officers, to be the Solicitor for the Defendant;—I mean Mr. Lambert. He may certainly have individual clients as well as the Society, introduced by the very respectable names which appear at the head of that Report.

It has been asked, my Lord, what is the object of this prosecution, beyond repelling the slander or soothing the feelings of the Gentlemen whose feelings were aggrieved? My Lord, there is undoubtedly an ulterior object, very well becoming the interference of the Legisla-

ture of the Colonies in which slavery is tolerated. My Lord, in modern times (what I dare say the Gentlemen of the African Institution intended was a very different object), pains have been taken to instruct the slaves to read; and this Report holds out to them, not only in this, but in other instances, in the very preceding page, that they cannot have justice done to them in the Courts in which the White Inhabitants are the Judges and the Jury. There is, in the page preceding this, another Libel upon a Petit Jury, who acted upon the trial of another person, stated to have been indicted for an offence in relation to the Slave-trade.

Mr. Scarlett.—That has not been read in evidence upon the trial, and it is not referred to by the affidavits.

Mr. Marryat.—It is part of the same publication, and is part of the opposite page of the same book.

Mr. Justice Bayley.—I apprehend you can read only those parts you read, unless you introduce them by affidavits.

Mr. Marryat.—Then I will not refer to that, if the Court is of that opinion; but I will ask, whether it is not of great importance to those who have the superintendence and management in any Colony in which slavery exists, to repel an attack upon the Administration of

Justice in that Colony ; especially if slaves, being instructed to read, have the means of reading this Report ; which, though Mr. Hatchard, I dare say, does not send out to the West Indies, most undoubtedly has been circulated very extensively indeed. It is stated in Mr. Hatchard's Affidavit, that 800 and odd of these copies were altered in consequence of the resolution of the Committee ; and I see in the account of the Annual Disbursements, in this same publication, that many hundreds are spent in printing, in the course of the year, for the purpose of distribution and circulation. If the slaves are taught that they cannot have justice in the island, but oppressions upon the Black Population are stated to exist in one island, which the inhabitants of another island have no means of contradicting or knowing the truth or falsehood of, such publications are highly calculated to induce the slaves in the Colonies to take the law into their own hands, and to avenge themselves.—I shall make no allusions to any insurrections which have taken place, or any plots which have broken out ; but I know of nothing so likely to induce insurrections in the West-India Colonies, as the encouraging a publication of this description.

Mr. Curwood.—My Lord, I am also of Counsel for this prosecution.—I should feel con-

tented in a common case to say nothing; but I feel in this case compelled to trouble your Lordships with a very few observations. With respect to the nature and character of this Libel, there can be but one opinion entertained: it is not my intention to examine it in detail; but it is very clear, that the result of libels like this, with other subsidiary ones, tend to shake the safety of our West-India Colonies to their very foundations; and it therefore becomes most important, my Lords, by every manner of means, to stop the circulation of such publications as your Lordship has heard read to-day.

My Lord, it is with great regret, and very painfully to my own feelings, that I stand up to ask your Lordship for a judgment against a Gentleman whose character stands so unquestionably high as the Gentleman who now stands upon your Lordship's floor for judgment. But your Lordship knows it is a law of stern political necessity—that where the Author of a libel of this kind cannot be found, the Publisher must answer for it; and if Mr. Hatchard is to be made a victim, according to the phrase used by his learned Council to-day, let it be recollected, he is not made the victim of the Prosecutors, but the victim of those persons in whom he has reposed confidence, and who

have deserted him in the hour of necessity; but who in a single moment can relieve him, by giving up the Author of this Libel. That is all we ask; and we pray for no vindictive judgment against Mr. Hatchard, if that can be done.

My Lord, it is not my intention to go into the subject of the Slave-trade at all; but those who entertain an opinion different from that which had long prevailed—those who think that the slave-trade ought to be abolished—affect to be persons of purer morality than others. My Lords, persons of pure morality pursue virtuous ends by virtuous means. It is not my intention to throw out any reflections against the members of that Society; I know, among the members of that Society, there are names exalted in virtue as they are exalted in rank: but whenever a society is formed for laudable objects, many persons lend their names to it, who would revolt from any indirect means of carrying their measures into effect. I do not therefore mean to apply my observations to those high and honourable names, but only to those who have been actually parties to the transaction now before your Lordships. I should not have adverted to this, had it not been, as I conceive, strictly before the Court,—

Mr. Hatchard, in the Affidavit he has put in, has inserted a Letter from the Secretary of the Society, which I presume he thinks furnishes him with a sufficient justification for not giving up the Author of this publication. That Letter, which is addressed to Mr. Hatchard, the Secretary states is written by order of the Board of Directors; and there the excuse made, why they cannot give up the Author, is, because "they conclude, that he believing in the erroneous information which he sent them to be true, they therefore do not feel themselves at liberty to violate the obligation arising from the confidence reposed in them." My Lords, has not Mr. Hatchard himself reposed a confidence in them?—has not their high name induced him to believe that they would put nothing into his hands but what was fit for publication?—and do they not now desert him when called upon to answer for their offence? Is that conduct which becomes persons who affect purer morality than the rest of mankind? Is it not more consistent with pure morality to give up a guilty man for judgment, than suffer an innocent man to stand upon the floor?—My Lord, as I said before, if this was not done, the fault is with them, it is not with the Prosecutors—Let them take shame to themselves; and

if Mr. Hatchard is made the victim of any, it is not for me to say, severe judgment, but whatever judgment Mr. Hatchard may sustain from your Lordships, let shame fall where shame is due.

JUDGMENT.

MR. JUSTICE BAYLEY.

John Hatchard,—You are to receive the Judgment of the Court for the Libel which has been sold by you. The Libel itself casts very high reflection upon some one or other of the Aides-de-Camp of Sir James Leith, the Governor of the Island of Antigua, and also on the administration of Justice in that Island, importing that there had been a great act of cruelty committed by one of the Aides-de-Camp of Sir James Leith, an high insult from this person afterwards to Sir James Leith, when he interfered to punish that, and afterwards a disposition in the Grand Jury of that country, when that Case was laid before them, from motives which must have been corrupt to refuse to concede justice to an injured individual. It is certainly a Libel of no mean or inconsiderable character ; and it is the greater, because it imports to come from a body of persons of very high respectability, who would not be likely to send out into the world, that which they had collected from information, unless they had canvassed that information ; and unless they had had strong grounds to believe, that that information was true ; and though they de-

scribe it as information, they describe it as information applicable to a fact which had occurred about a year before ; so that there must have been full time to have investigated into the truth of that fact. It came therefore to the world under those circumstances which made it the imperious duty of those persons upon whom the Libel was made, to appeal to the Laws of the Country, in order that it might be known, that there was no foundation for that Libel. It is a Libel stating a variety of circumstances, which would carry with them at least the appearance that it could not have been fabricated.

This being the character of the Libel, it appears, that it was published and sold by you. Not that you are the Printer ; it does not import that it was printed by you : but it appears, that you are the person by whom it was sold, having been printed by order of the Directors of the African Institution. “ The Directors are informed, that about a year ago, the following circumstance took place in the Island of Antigua. A Gentleman, who held the situation of Aide-de-Camp to the Governor, Sir James Leith, having severely whipped a negro-woman of his own, who was pregnant, she laid her complaint before the Governor, who humanely attended to her story, and dismissed

her with some money for herself, and a note to her owner." I need not go through the remainder of it, because it has been stated already to the Court, and it has been fully discussed and canvassed at the Bar. It turns out, that there is no reason to believe, that from beginning to end, there is a word of truth in the story; but that it is a wicked fabrication, coined somewhere or other.

The Court, in considering the circumstances of the Case, have no reason to believe that it was fabricated by you. They have no reason to believe, that you knew or had the means of knowing by whom it was fabricated. You received it as you had received other reports, from a Society in which there were a great number of persons of high character and high consideration in the Country, and from whom you might fairly expect, that there would have been at least personal caution—from whom you might also have expected, that if there were any thing improper in any publication coming from them, they would not have stopped the course of justice, but that they would have enabled any person against whom any insinuation had been made to have traced that insinuation up to the fountain-head; so that if there were any attack made upon any individual whatever,

they should not interfere between the course of justice and that attack.

It appears by your affidavits, that you received only a limited number of this Report, and that that also had been the course with respect to all the other Reports which had been published : that there were a great many others published, there can be no doubt. It is a work intended for very extensive circulation—probably not for circulation alone here, but for circulation in places where publications of supposed and fictitious facts of this description may be calculated to do a great deal of mischief. Your own circulation was, according to the affidavits of which the Court see no reason upon earth to form any doubt, to a very limited extent—you published only six.

It had not escaped my observation, when it was observed upon by Mr. Marryat, that the Society had it called to their attention early in the month of October, that at least there was ground for doubting the truth of the statement which this Libel contained, and that they had adopted some public means, first, for the purpose of insinuating that it was matter of doubt whether it was true, and afterwards for the purpose of saying, that that doubt was increased : but it does not appear that any act

of the Society in that respect reached your knowledge until the month of November, when you were called upon by Mr. Martineau—if you had known that they had come to a resolution of that kind, it would have been your bounden duty, the instant it was matter of doubt whether it was true or not, to have forbore and stopped the circulation as far as it respected yourself. But there is a paragraph in your affidavit to which I called the attention of the Counsel, according to which I think it is but just to you to say, that we have no reason to suppose, that you had the least knowledge of what had been done by the Society on the 12th or 29th of October, or that you had any reason to believe that they entertained any doubt with respect to this paragraph, prior to the period when you were called upon by Mr. Martineau, the Solicitor for this prosecution.

Mr. Hatchard.—I beg leave to confirm that, my Lord—that I did not know it till Mr. Martineau called upon me.

Mr. Justice Bayley.—It has been insinuated that you were not so active as you ought to have been, in order to discover who the real author was. Upon fairly looking upon the affidavits from the beginning to the end, I think that that imputation against you is hardly war-

ranted. I think it is the fair result from the whole of the affidavits, that from first to last you appear to have given the Prosecutors as much information as you really possessed ; and that it was matter of absolute inability on your part to discover who the author was. Whether you have been kindly used by those persons, in whose hands you have been the instrument, is a matter which we cannot say. I feel myself warranted in saying, that it is at least unfortunate, that any resolution should have been passed, by which the author of a publication of this kind should have been effectually screened from justice.

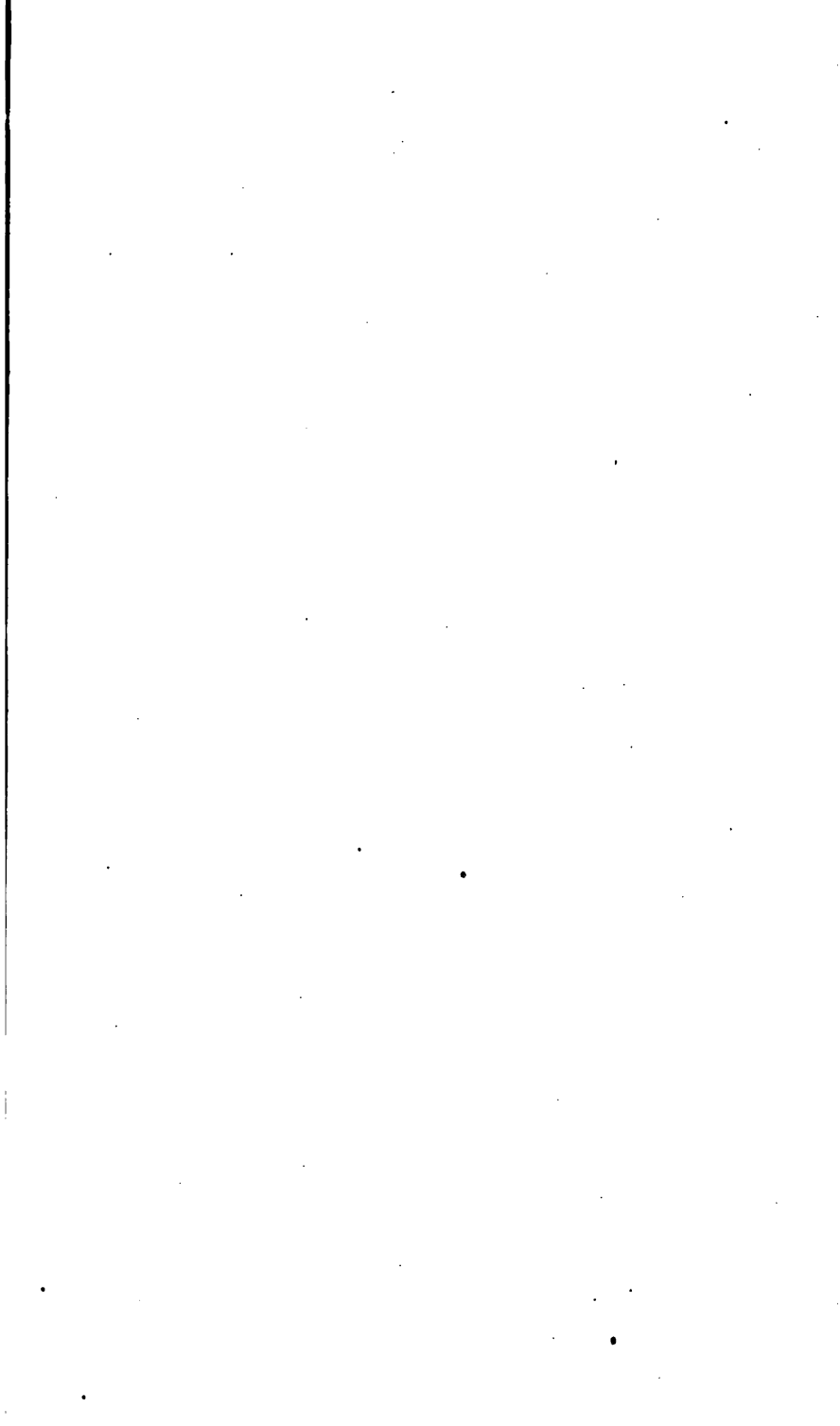
It is insinuated, that this originated in a letter from the West Indies. There is no affidavit that any such letter existed ; but supposing, that there were such a letter, it is not necessarily true, that the author of that letter is the person upon whom this criminality ought to attach. He may have been misled by other persons ; but when enquiry was made who the author of that Libel was, it is to be regretted that there are any persons who step between, and who prevent that information being given, who prevent the persons upon whom the Libel is made from tracing the Libel to its source and fountain-head. That somebody is very highly criminal in this Case, no one who has

read the publication, can at all doubt; that, it has originated in wilful and wicked fabrication, no man alive can doubt. That it is defeating the purposes of Justice, to prevent that information by which the wicked criminality might be traced up to the original author, is obvious. However, the Court does not feel itself warranted in visiting upon you that which is not your offence; satisfied as they are, that you have done every thing in your power to discover who the author is; and they feel that they have no right to add to your punishment, because you have not given up that author, whom you really are absolutely incapable of giving up. At the same time, every person who publishes a Libel is answerable for that Libel; and if no other author is forthcoming to the hands of Justice, the person by whom the publication is made, is the person who must, to a certain extent at least, answer. Not that there is the same degree of criminality, and consequently ought not to be the same degree of punishment inflicted upon the person who stands merely in the character of a Bookseller, selling for other persons, and selling for other persons under circumstances which imply no want of caution on his part. You did not receive it from suspicious characters—you received it

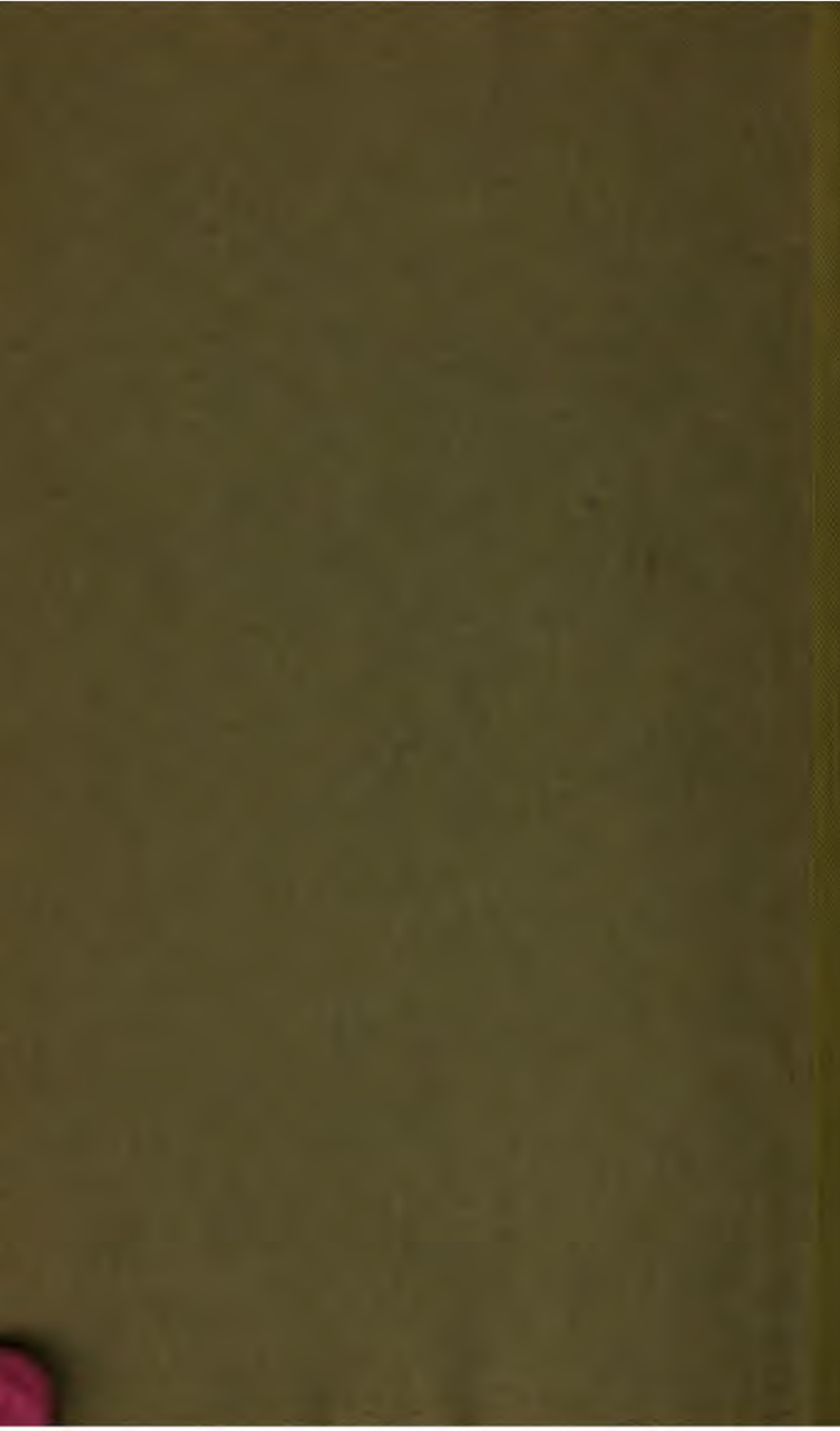
from persons upon whom you thought you might with propriety and confidence rely.

Taking all the circumstances of the case into consideration—taking the character which has been given you into consideration—And taking into consideration that you are a sacrifice to other persons,—that this has not originated with you, and that you are not able to give up the real author; this Court doth order and adjudge, that for this your offence, you do pay to The King a fine of £100., and that you be imprisoned in the custody of the Marshal of the Marshalsea, until that fine is paid.

The Defendant immediately paid the fine, and was discharged.







MAY 23 1982

